WATER AND NATURAL RESOURCES COMMITTEE

2003
REPORT

Santa Fe, New Mexico

December **2003**

File No. 205.176-02

2003 APPROVED
WORK PLAN
for the
WATER AND NATURAL RESOURCES COMMITTEE

The Water and Natural Resources Committee was originally created by the Legislative Council in 1998. Water-related litigation has increased in recent years, including cases dealing with the federal Endangered Species Act of 1973 and potential litigation with Texas pursuant to the Rio Grande Compact and the Pecos River Compact. Failure to deliver water to Texas under terms of these compacts could result in millions, if not billions, of dollars of economic consequences to New Mexico.

The Water and Natural Resources Committee focused on issues related to these and other lawsuits in recent years, but for the 2003 interim, at the request of the Legislative Council, the committee focused on:

1. financing water and wastewater projects, including through the water trust and water project funds; and

2. the development of water conservation techniques and improving water use efficiency (including testimony on cloud seeding, watershed management, conditions of water use permits, domestic well restrictions and conservation requirements for electric power plants).

In addition, the committee continued to monitor the status of water rights acquisition by municipalities and water rights adjudications.

MEMBERSHIP

Sen. Carlos R. Cisneros, Chair (D)
Rep. Joe M Stell, Vice Chair (D)
Sen. Sue Wilson Beffort (R)
Sen. Joseph J. Carraro (R)
Rep. Joseph Cervantes (D)
Sen. Dede Feldman (D)
Sen. Mary Jane M. Garcia (D)
Rep. Dona G. Irwin (D)
Rep. Larry A. Larrañaga (R)
Rep. James Roger Madalena (D)
Rep. Brian K. Moore (R)
Rep. Andy Nunez (D)
Sen. Mary Kay Papen (D)
Sen. Shannon Robinson (D)
Rep. Henry Kiki Saavedra (D)
Sen. H. Diane Snyder (R)
Rep. Don Tripp (R)
Rep. Robert White (R)

Advisory Members:
Rep. Ray Begaye (D)
Rep. Anna M. Crook (R)
Sen. Clinton D. Harden, Jr. (R)
Sen. Timothy Z. Jennings (D)
Sen. Gay G. Kernan (R)
Rep. Rhonda S. King (D)
Sen. Steve Komadina (R)
Rep. Ben Lujan (D)
Rep. Danice Picraux (D)
Sen. Leonard Lee Rawson (R)
Sen. Nancy Rodriguez (D)
Rep. Mimi Stewart (D)
Sen. Leonard Tsosie (D)
Rep. Eric A. Youngberg (R)

Water and Natural Resources Committee
Approved 2003 Budget and Meeting Schedule

		MEMBERS
July 17-18	Red River	
August 7-8	Ruidoso	
September 18-19	Elephant Butte	
October 16-17	Santa Fe	
November 13-14	Santa Fe	
Total Budget Approved		**$35,000.00***

*This amount does not include the $29,757.20 budget required for per diem and mileage for advisory members.

MINUTES
of the
FIRST MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE

June 6, 2003
Room 307, State Capitol

The first meeting of the water and natural resources committee was called to order by Senator Carlos R. Cisneros, chair, at 10:15 a.m. on Friday, June 6, 2003, in room 307 of the state capitol.

PRESENT
Sen. Carlos R. Cisneros, Chair
Rep. Joe M Stell, Vice Chair
Sen. Sue Wilson Beffort
Sen. Joseph J. Carraro
Rep. Joseph Cervantes
Sen. Mary Jane M. Garcia
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga
Rep. James Roger Madalena
Rep. Brian K. Moore
Rep. Andy Nunez
Sen. Mary Kay Papen
Sen. Shannon Robinson
Sen. H. Diane Snyder
Rep. Don Tripp
Rep. Robert White

ABSENT
Sen. Dede Feldman
Rep. Henry Kiki Saavedra

Advisory Members
Rep. Anna M. Crook
Sen. Gay G. Kernan
Rep. Rhonda S. King
Rep. Ben Lujan
Sen. Nancy Rodriguez
Rep. Mimi Stewart

Rep. Ray Begaye
Sen. Clinton D. Harden, Jr.
Sen. Timothy Z. Jennings
Sen. Steve Komadina
Rep. Danice Picraux
Sen. Leonard Lee Rawson
Sen. Leonard Tsosie
Rep. Eric A. Youngberg

Staff
Gordon Meeks
Jon Boller

Guests

The guest list is in the meeting file.

Copies of written testimony and handouts are in the meeting file.

Water Project and Management Financing Needs

David Harris, executive director of the New Mexico finance authority (NMFA), summarized the governor's plans to finance $200 million in water projects, beginning with the passage of House Bill 882, which authorizes the state board of finance to issue severance tax bonds in an amount equal to 10 percent of bonding capacity available for severance tax bonds each year for water projects recommended by the water trust board. Mr. Harris said that the governor would also like to see 10 percent of general obligation (GO) bonding capacity devoted to water projects annually.

Carlos Romero, NMFA, reviewed the various funding mechanisms and programs available for water projects and the procedures for obtaining funds under those mechanisms and programs. According to Mr. Romero, there are approximately 1,400 public water systems in the state; 63 percent of those systems serve fewer than 100 customers each and in total less than five percent of the state's population, while one percent of that number serve more than 10,000 customers each but in total serve more than 50 percent of the state's population. He estimated that over $2 billion for water projects will be needed in next few years, and nearly $1.5 billion will be needed to develop new surface supplies in the long term. Meeting arsenic standards over the next four to seven years will require an additional $375 million, according to Mr. Romero.

Anne Watkins, office of the state engineer (OSE), outlined 17 regional water system projects that are a priority in the coming year, and said these projects need to be coordinated with each other. She also noted that the reason the water trust fund was created is to fund large water projects throughout the state and address the long-term water needs of the state.

Proposal to Finance the Water Trust Fund

Lawrence Rael, director, mid-region council of governments, stressed the need for a permanent funding mechanism for water projects, including capital projects, water resource management, administration, planning, litigation and compact compliance. He said that if the public understands the severity of the situation, it would be willing to pay as long as the revenue plan is broad-based, equitable and efficient. The capital outlay estimate for identified projects to date is nearly $2.5 billion, or $120 million annually for the next 20 years, he explained. Mr. Rael suggested that the state needs to pursue federal funding sources through its congressional delegation, as well as using state sources such as: increasing GO bonding capacity with a 1 mill statewide property tax that would generate $30 million annually; imposing a dedicated quarter cent gross receipts tax to generate $90 million per year; and instituting user fees on government, municipal, industrial and recreational users.

Water Conservation Technologies

Lisa Martinez, director, construction industries division (CID), regulation and licensing department, explained that CID is in the process of reviewing and updating the plumbing code and reviewing the building code to address water conservation concerns such as the recently enacted gray water bill. Jan Janika, also from CID, said the division is studying water re-use and that 90 houses will be involved in a pilot program for a sophisticated water treatment system to reclaim water. A discussion ensued concerning the merits of low-flow toilets, urinals in the home, the interplay between statutory changes and rules changes and the trade-off of using air conditioners instead of swamp coolers.

Karen Yuhas, water conservation officer for Albuquerque, reviewed Albuquerque's historical water use, noting that by the end of 2002, it had reduced its water usage by 26 percent from a baseline average established from 1987 to 1993. Usage is down another 8 percent thus far this year, according to Ms. Yuhas, and the city is increasing its water conservation goal from 30 percent to 40 percent. Ms. Yuhas also reviewed: the city's rebate program, which includes rebates for low-flow toilets, low-flow showerheads, front-loading clothes washers, xeriscaping, hot water recirculation units, rain barrels, multisetting sprinkler timers, converting from swamp coolers to refrigerated air conditioning, low-water-use dishwashers and gray water reuse; the water waste enforcement program; the larger users' ordinance; water conservation surcharges; the residential and small commercial water audit program; the larger commercial water audit program; and the requirement for new development.

Ms. Watkins explained that statewide conservation efforts can reduce demand and thus reduce the cost of water infrastructure development. She said that other states' efforts at conservation can be instructive, and suggested that several measures be considered to reduce consumption, including requiring conservation plans from any entity seeking state financial assistance, making technical assistance available to communities, instituting a conservation tax credit, using best conservation practices in all water projects, providing state funding for conservation projects, requiring metering and monitoring of all water usage and ensuring that conservation practices be used in all state facilities.

Alice Darilek, OSE, outlined the state engineer's water conservation efforts, noting that the interstate stream commission (ISC) and OSE started examining water conservation technologies in the early 1990s. The agencies published their first brochure on the subject in 1994, she said, which was financed by the ISC, with later publications funded with federal money. Federal funding has since dried up, but OSE has continued its efforts. Demand for OSE's conservation guides has been increasing, according to Ms. Darilek, and the office will soon be providing technical assistance to municipal water utilities.

Work Plan

The committee adopted without objection the proposed interim work plan, with the addition of looking into the following issues: progress on funding of water adjudications, watershed management, state engineer authority to condition water use permits, domestic wells, water use by electric power generating plants and the possibility of meeting with Texas legislators on water issues.

MINUTES
of the
WATER AND NATURAL RESOURCES COMMITTEE
July 17-18, 2003
Red River Conference Center

The July 17, 2003 meeting of the Water and Natural Resources Committee was called to order by Senator Carlos R. Cisneros, chair, at 10:05 a.m. in the Red River Conference Center.

PRESENT
Sen. Carlos R. Cisneros, chair
Rep. Joe M Stell, vice chair
Sen. Sue Wilson Beffort (July 18)
Sen. Dede Feldman
Rep. Larry A. Larranaga
Rep. Brian K. Moore
Rep. Andy Nunez
Sen. Mary Kay Papen
Sen. H. Diane Snyder
Rep. Robert White

ABSENT
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Sen. Timothy Z. Jennings
Sen. Steve Komadina
Rep. Ben Lujan
Rep. Danice Picraux
Sen. Leonard Lee Rawson
Sen. Leonard Tsosie
Rep. Eric A. Youngberg

(Attendance dates are noted for those not present for the entire meeting.)

Staff
Gordon Meeks
Jon Boller

Guests
The guest list is in the meeting file.

Thursday, July 17

MINING REMEDIATION

Leroy Apodaca, manager of administrative services, Molycorp, addressed the two rock piles that have been in the news lately. Mr. Apodaca explained that the molybdenum mine had been in operation since 1921. In the 1960s, the company began developing the open pit part of the mine and began producing ore from the open pit in 1965. The company ceased operation of the open pit portion of the mine in 1983. The piles of rock visible from the highway between Questa and Red River are the removed overburden. State law requires the company to have a closeout plan that includes a stability review of the rock piles to ensure that they will not slide onto the highway or into the valleys below. Molycorp submitted a study done by an independent contractor to the Energy, Minerals and Natural Resources Department that identified two of the rock piles as being susceptible to saturation and mud slides with possible catastrophic collapse. One rock pile has been moving since 1968, Mr. Apodaca said, so the company stopped adding to it. Molycorp hired five experts to determine what the risks are and to identify what the significant precipitation would be to trigger a collapse and to monitor rainfall in real time.

Questions and committee discussion addressed:

- dates of the past open pit mining;
- revegetation of the site;
- precedents for rock pile collapses;
- area geology;
- the mine's work force and payroll;
- the mine's effect on the stream system;
- the company's necessary profitability to be able to pay for environmental compliance; and
- composition of the independent review board that issued the negative report on the rock piles.

The chair introduced Red River's Mayor Craig Swaggerty, who welcomed the committee to Red River and praised Senator Cisneros for representing the area so well.

FINANCING WATER AND SANITATION DISTRICTS

John Painter, El Prado Water and Sanitation District, told the committee that water and sanitation districts have more power than mutual domestic water users' associations, but that the Water and Sanitation District Act needs to be updated. He referred to Senator Nava's bill from the 2003 regular session, Senate Bill 447. He thanked the legislature for approving measures that allow water and sanitation districts to be established in any county. Additionally, he said that districts would like to be empowered to pay board members and to be included under the forfeiture exemption section of the water rights for 40-year planning.

He said that districts also have concerns about the proliferation of domestic wells and their impairment of water and sanitation districts' water rights. He told the committee that he would like to have the same power as cities to limit domestic wells when the district can provide water services. He said that the lack of standards for domestic wells may lead to contamination of ground water. Mr. Painter told the committee that it is a very serious dilemma that people do

not want to pay for water services. Districts are unable to raise rates to cover the costs of providing water and sanitation services. Water system user fees do not cover the cost of operation of the system. He said that water and sanitation districts need the ability to levy a one-fourth percent gross receipts tax to help pay for water. He added that the costs for environmental assessments and meeting new regulations require additional sources of revenues.

Joy Garcia, manager of El Prado Water and Sanitation District, said that the district is required to provide a lot of documentation to the state, documentation that costs a lot to compile and submit. The New Mexico Finance Authority's grant planning assistance does not cover costs of developing the project.

Questions and committee discussion addressed:

- the definition of cluster wells;
- the number and powers of water and sanitation districts in the state;
- rates charged to customers by districts; and
- taxation powers of districts.

FINANCING CONSERVATION AND RIVER RESTORATION

Paul Paryski, lobbyist for the Alliance for the Rio Grande, explained that the alliance is a coalition of 12 organizations and introduced the other speakers.

Steve Harris, Rio Grande Restoration, told the committee that a major part of the coalition's goals is to develop a program for protection of the Rio Grande. He said that the brochure distributed with the coalition's presentation is a compilation of efforts to restore the Rio Grande. These efforts include: the Pueblo of Santa Ana's work to remove non-native vegetation species along six miles of the river; the Pueblo of Sandia's similar effort; the Save Our Bosque Task Force's restoration of over 400 acres south of Bosque del Apache; the City of Albuquerque's open space policy; the Endangered Species Collaborative program of restoration of the silvery minnow habitat; salt cedar eradication efforts sponsored by the state; and several federal initiatives such as the Corps of Engineers, the Farm Bill Super Conservation Reserve Enhancement program and Environmental Protection Agency watershed grants.

Mr. Paryski told the committee that one of the reasons for the presentation is to call the legislature's attention to the federal funding requirement that the state provide matching funds.

Beth Bardwell, World Wildlife Fund, asked the committee to consider water users fees as a potential funding source for restoration and augmentation of water supply in New Mexico. She summarized her efforts to date on developing the water user fee concept. Her discussions have received varied reactions. She emphasized that there is a funding gap in the state for water projects. New Mexico might need $100 million a year for water-related projects and has only committed 10 percent of that so far. Having users pay the cost would be a fair, broad-based system to fund water augmentation efforts. She said that one of the expenses that water user fees could pay for is statewide metering. She said that the benefits of metering are: it protects water rights, provides data for planning and reduces consumption up to 20 percent. She closed by saying that user fees could also allow the state to buy water rights for public purposes.

Questions and committee discussion addressed:

- the use of goats for salt cedar eradication;
- agriculture water rights holders being charged twice for water they have already paid for under a water user fee scheme;
- unconstructive denigration of agriculture and rural economies;
- the potential for water user fee benefits to be directed back to users;
- ways to structure fees so that large urban users pay a greater percentage;
- availability of federal funds;
- monitoring of river restoration projects;
- cooperation with cities and irrigation districts in the collection of fees;
- only metered water being charged the fee, or estimating use and charging the fees on that basis;
- administration of the fund;
- the role of the Water Trust Board;
- the position of the governor and the Blue Ribbon Tax Reform Commission;
- basis of the fee on usage rather than rights and water rights adjudications;
- the highest and best use of water and who makes that determination;
- evaporation losses and how to overcome them;
- low-water-use crops study;
- existing fees on water use; and
- the inability of the cost of production of agriculture to be recouped in selling of the product and whether a fee can be adjusted or directed in a way that does not harm agriculture.

WATER HARVEST SYSTEMS

Mr. Paryski said that the Sierra Club will be proposing two bills on water harvesting. He said that a pilot effort at one school harvested 1.5 acre-feet in a year. He said that one bill would establish a pilot water harvesting system at the State Capitol and the other bill would require water harvesting capabilities in the design of all new commercial construction in the state. He said that there may be a need for standards for cisterns and other components of water harvesting systems.

WATER SERVICE FEES

Janie Chermak, economics professor at the University of New Mexico, reported the results of her research on water service fees in residential urban centers. She said that the price of water does not differ much between the East and the West or between water-scarce or water-rich areas. She said that consumers will use water if it is cheap and that prices can be a signal of the abundance of water or its scarcity. She said that a 10-percent reduction in farming may provide lots of water, but that the prices cities charge or pay may not reflect the real cost. Leasing of water in hard times would work, if the leasing price made it worthwhile to the water owner. An extensive discussion of the role of prices in water consumption followed. Some committee members believed that other factors are more important. Some made the point that the rich are different, and that attitudes change with income level.

The committee recessed at 5:30 p.m.

Friday, July 18

John Szerdi, Iasis (a resort in Taos with water recycling and water harvesting systems), described water and wastewater system problems of the Village of Questa and his organization's proposal to assist the village. Questa currently does not have enough water rights to serve its population, and it currently overuses approximately 57 acre-feet per year. He detailed the community's water accounts, pointing out that Questa only gets about 37 percent return flow credit from its 77 acre-feet annual use rights. Demand, however, is as high as 167 acre-feet. The village needs to invest in water and sewer hook-ups, along with system recycling so that it can get 100 percent return flow credits. If the system can be improved to recycle all its water, the village would not have to buy new water rights.

Questions and committee discussion addressed:

- how the village's water credit is determined; and
- the cost of $4 million needed for the project (Mayor Charlie Gonzalez said the village has 2,200 residents and hopes to upgrade the system for a long-term solution rather than just buying water rights and meeting minimum standards as a short-term solution).

John Stomp, Albuquerque water program manager, told the committee that the city's program emphasizes conservation, reuse and new water supply. Last year, the city pumped 105,000 acre-feet, its lowest level of use since 1985. The city is now using its San Juan/Chama water for the first time. Albuquerque's reuse projects may seem counterintuitive, but they are not when the technical elements are understood. He said that the city is promoting the use of shallow ground water in the valley for lawns and lanscaping because this shallow ground water is unsuitable for drinking. Thus, it makes sense to reduce deeper aquifer pumping of cleaner water needed for drinking for those uses that do not require that level of quality.

Michael Chapman, a home builder in Santa Fe, explained what measures the homes he builds have that conserve water. He invited the committee to tour one of his homes during a future meeting.

Questions and committee discussion addressed:

- side-channel low-flow toilets;
- refrigerated air compared to evaporative cooling;
- comments by Mark Christianson of PNM stating that switching to air conditioning increases the average electric bill from $21.00 to $70.00 a month, but results in a 30 percent water savings by reducing the average consumption from 960 gallons to 620 gallons;
- the cost of $6,500 for the Chapman home water reuse system; and
- the water conservation fee.

FINANCING ENDANGERED SPECIES RECOVERY

Todd Stephenson, deputy director of the Department of Game and Fish explained to the committee that the Endangered Species Collaborative has been meeting for three years to develop a 10-year recovery plan for the silvery minnow. Twenty-five million dollars in federal funds have been made available to promote recovery of species and to establish creative

ways to use water, preserve species and meet compact obligations. However, the federal government requires a 25 percent match from non-federal sources, which will total $3 million per year for 10 years.

Questions and committee discussion addressed:

- specific uses of appropriated money;
- habitat restoration, research for long-term fixes, monitoring and refugia operations;
- purchase of water rights;
- many other factors besides water that affect the silvery minnow;
- Elephant Butte storage water and Texas' agreement to store more water upstream to reduce evaporation;
- who the water belongs to;
- underdelivery triggering a lawsuit with Texas;
- the Fifth Amendment to the U.S. Constitution prohibiting takings of property without just compensation;
- the biological opinion of the U.S. Fish and Wildlife Service;
- the role of the U.S. Army Corps of Engineers; and
- appeal of the federal Tenth Circuit Court of Appeals opinion.

HYDROGRAPHIC STUDIES

James Gosz, biology professor at the University of New Mexico, described the National Science Foundation challenge grant to the committee, and that getting matching funds from the state is a way to make sure that the project is something that relates to the state's needs.

Rob Bowman, hydrology professor at the New Mexico Institute of Mining and Technology, and Karl Wood, director of the Water Resources Research Institute at New Mexico State University, told the committee that the EPSCOR grants from the National Science Foundation are the best opportunity for New Mexico to compete with neighboring states for major federal research grants. New Mexico's problem has been, and is, the lack of a state match for federal research dollars. Six universities in New Mexico want to participate. Last year, New Mexico only got $4 million while other states got more than $40 million.

Mark Fesmire, Office of the State Engineer, told the committee that the universities are proposing to do studies that need to be done anyway in relation to water rights adjudications, and that it would not be good to duplicate efforts.

Questions and committee discussion followed regarding:

- the private sector's role; and
- use of existing technologies rather than duplication of available work.

A motion to adopt minutes was passed.

The committee adjourned at 12:30 p.m.

MINUTES
of the
WATER AND NATURAL RESOURCES COMMITTEE

August 7-8, 2003
Ruidoso Convention Center
Ruidoso

The August meeting of the Water and Natural Resources Committee was called to order by Senator Carlos R. Cisneros, chair, at 10:10 a.m. on August 7, 2003 in the Ruidoso Convention Center in Ruidoso.

PRESENT
Sen. Carlos R. Cisneros, chair
Rep. Joe M Stell, vice chair
Sen. Sue Wilson Beffort
Rep. Joseph Cervantes
Sen. Mary Jane M. Garcia (8/8)
Rep. Dona G. Irwin
Rep. Larry A. Larranaga
Rep. James Roger Madalena
Rep. Andy Nunez
Sen. Mary Kay Papen (8/8)
Rep. Henry Kiki Saavedra
Sen. H. Diane Snyder
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Rep. Robert White

ABSENT
Sen. Joseph J. Carraro
Sen. Dede Feldman
Rep. Brian K. Moore
Sen. Shannon Robinson

Advisory Members
Rep. Anna M. Crook
Sen. Gay G. Kernan (8/8)
Rep. Rhonda S. King
Sen. Nancy Rodriguez (8/8)
Sen. Leonard Tsosie

Rep. Ray Begaye
Sen. Clinton D. Harden, Jr.
Sen. Timothy Z. Jennings
Sen. Steve Komadina
Rep. Ben Lujan
Rep. Danice Picraux
Sen. Leonard Lee Rawson
Rep. Mimi Stewart
Rep. Eric A. Youngberg

(Attendance dates are noted for those not present for the entire meeting.)

Staff
Gordon Meeks
Jon Boller
Alicia Collins

Guests

The guest list is in the meeting file.

Thursday, August 7

PECOS RIVER COMPACT COMPLIANCE STATUS

John D'Antonio, state engineer, explained House Bill (HB) 417 (2002), which guides how the Interstate Stream Commission (ISC) may purchase and retire water rights in the Pecos River valley to ensure delivery of water to Texas. Estevan Lopez, executive director of the ISC, reported that in the Carlsbad region, offers were received for 7,500 acres but only 4,500 acres were needed. In the Artesia-Roswell area 18,900 acres were received and only 7,500 were needed. Prior to making purchases, the ISC is required to conduct appraisals and a market study of water rights. However, by entering the market, the state has affected current market prices, and the offers total more than market studies indicated they would.

Questions and discussion by the committee addressed:

- produced water;
- plans for the use of the property purchased;
- the portion of offered rights that are good offers and can actually be used for compliance;
- requests for copies of the settlement agreement;
- whether the offers are adjudicated or non-adjudicated water rights;
- implications of this kind of settlement as opposed to administration of priority rights; and
- that this settlement will be part of the court's decreed water rights adjudications.

EXECUTIVE SESSION

RUIDOSO AREA WATER ISSUES

Lorri McNight, Ruidoso Village manager, and Leon Eggleston, mayor, welcomed the committee to Ruidoso. They told the committee that Ruidoso has a lot of water rights but very little wet water. Ruidoso is in a serious water shortage, with 7,500 residents year-round, and a population that swells to 35,000 at times during the summer. The Village Council has decided to move into the next stage of water conservation. Ms. McKnight said the village normally gets 4.5 inches of rain in July but has had only three-tenths of one inch so far. Phase 3 of the village's drought management plan allows no watering except by hand-held hose. The bottom line: Ruidoso needs new sources of water.

Committee questions and discussion addressed:

- new development restrictions;
- regional cooperation (with Alamogordo and other cities and counties);
- the water utility rate structure;
- restrictions on car washing; and
- forest thinning.

Patsy Sanchez, Lincoln County planning director, addressed the committee about loopholes in the New Mexico Subdivision Act. She told the committee that there is little that

counties can do to manage water consumption until the legislature gives more water conservation authority under the subdivision law.

Questions and discussion addressed:

- differences in water conservation ordinances between different jurisdictions;
- the need for a uniform water conservation policy; and
- whether the loopholes are unfair.

ALAMOGORDO-TULAROSA VALLEY WATER SUPPLY ISSUES

Dan Abercrombie, representing a Tularosa water rights association, said that during the 1970s and 1980s precipitation was well above average. He said that area resident became accustomed to plentiful water, but water levels are falling now. He told the committee that if there is a new well field above Tularosa, the area may not get the recharge of its aquifer. The well field will intercept the existing flow from the mountains, which may cause salt water encroachment from the west and lowering of the existing aquifer. The people of Tularosa, he said, are very concerned. There are 1,081 well owners around Tularosa who will not benefit from the deal the Village of Tularosa made with Alamogordo. Property values are declining around Tularosa. He asked the Office of the State Engineer to do projections out 50 or 60 years to see if Tularosa will be adversely affected.

Pat McCourt, city manager of Alamogordo, explained where the city gets its water. He said that in the long term, the city will need to acquire more water rights. In the next 40 years, it will need 10,000 acre-feet to deal with the worst-case drought scenario. The city is looking at desalination as its major strategy. He said there are protests to the city's application before the state engineer. A settlement was reached with the Village of Tularosa but not the other protestants. He told the committee that Alamogordo is rationing water now. He said the utility has a progressive rate structure and that daily per capita consumption is 134 gallons, the lowest in the state. Alamogordo has three major water projects: the Sandia project research facility, the municipal desalination facility and the use of military portable water units.

Questions and discussion of the committee addressed:

- the source of money to pay for the projects; and
- that, according to Alamogordo Mayor Dan Carroll, Alamogordo does not want to buy up agricultural lands and dry them up to supply the city, but would rather use saline water to preserve agriculture.

TOUR OF MESCALERO FOREST MANAGEMENT AREAS

Thora Padilla, manager of the Mescalero Apache Tribe's Resource Management and Protection Office, led a tour of the tribe's forest management operations. Berny Ryan, David Kirgin, Bill Hornsby and Gwen Bridge were also speakers during the outing. Forest thinning activities were visited and explanations of the resulting forest biodiversity and wildlife benefits explained. Questions and discussion centered around the economics and goals of forest management. Priorities for thinning by the tribe are in corridors near residential areas and main transportation arteries. Wildfires on tribal lands have been more manageable and less destructive

as a result of the thinning operations, and habitat has improved for most species of wildlife, they said.

Friday, August 8

The minutes of the Red River meeting of the committee were approved without objection.

HISTORY OF NEW MEXICO WATER POLICY

Representative Stell discussed the history of irrigation. He said civilizations have come and gone depending on water. For example, he said irrigation on the Nile, the Yellow River and others resulted in sediment building up until agricultural fields became higher than the points of diversion for their water. He told the committee about plans by the Chinese to flood 800,000 acres in the Yangtze River Valley and that China's farming acreage will soon be vastly expanded, creating new competition for United States wheat producers. He said that in 1280, New Mexico had a drought that drove the Anasazi to abandon their homes and resettle along the Rio Grande. Today, he said, water is money, jobs and economic development. One company — Philips Semiconductor — uses 800 acre-feet annually in Albuquerque. He said that University Hospital is the second-largest user. Water is life and culture. The acequia culture, which was thriving before the Spanish arrived, is the foundation of New Mexico's society. But, he said, drought in the desert southwest is a recurring phenomenon that we must deal with. During the 75 years of his life, five out of every 10 years have been water shortage years. Legislators must recognize that New Mexicans live in a dry climate.

The Pecos River used to be a constantly flowing river, he said. Six streams fed into the Roswell area. Five of those streams originated from springs. He told the committee that artesian wells were first drilled in 1899. He said that the spring flow soon decreased and eventually stopped. As a result, the Pecos Valley Artesian Conservancy District was established, wells were metered, ditches were lined and irrigated acreage was taken out of production beginning in the 1930s.

New Mexico began negotiating with Texas for a river compact in the 1930s, but the total effect on the river of well pumping still has not been seen. About that time, it was suggested that getting rid of salt cedar would provide enough water to offset losses from ground water pumping. The compact that was ultimately signed with Texas prohibited any reduction in the flow of the river that resulted from any human activity, but the state engineer approved more drilling permits anyway. For 34 years, New Mexico delivered 10,000 acre-feet a year less than was required under the compact. Subsequently, in the 1960s Texas sued. In 1989, the United States Supreme Court ordered New Mexico to pay Texas $14 million. If the Carlsbad Irrigation District (CID) had joined with Texas in the lawsuit (which some members feel it should have), the state would have had to ensure the CID its full allocation. In the *Lewis* case (the Lower Pecos water rights adjudication lawsuit now pending before Judge Byrd) the CID has been asking for a priority call on the river in order to obtain the district's rightful share of the water. The ISC has been using the lease purchase program to satisfy the CID's water rights for approximately the last 12 years. Since the drought hit, that is impossible, Representative Stell

said. The state will have the same problems on all the other rivers, but if it can get through the Pecos problem, it will be able to address those other problems more effectively.

For this reason, he said, the ISC appointed the Pecos River Ad Hoc Committee to negotiate a consensus settlement. All the parties came up with an agreement, and HB 417 was the result. The state has probably appropriated $40 million since 1992, which is 1/164th of the annual state budget. That is not a huge amount considering the importance of water to economic development and compared to what the state spends for education and health, Representative Stell said. If the legislature does not fund the state engineer for the work given to him, his hands are tied.

The New Mexico Finance Authority was created in the early 1990s by legislation that the late Senator Eddie Lopez sponsored to fund infrastructure projects. That has been a good program, Representative Stell said. Three or four years ago, the state created the Water Trust Fund to help address the need for some huge, $2-$4 million projects. That year, the state had $600 million in new revenue. But Governor Johnson vetoed the bill with funding and signed the bill that had no funding. Last year, under Speaker Ben Lujan's leadership, the state put $10 million into the Water Project Finance Act. The state has a board and a mechanism, but is putting any money approved into immediate expenditures for emergency projects rather than creating a trust fund. The state has not yet come up with a way to finance the major projects that the state and its economy are going to depend on for life, he said.

These projects include expenses that will be needed to implement a settlement agreement with the Navajo Nation so Gallup and chronically underserved chapter houses can have water. On the Ogalalla, T. Boone Pickens has put together 150,000 acre-feet of water in Texas to sell. Maybe New Mexico should allow private entities to profit from water so that someone can deliver the resource to where it is needed. There has been a 90 percent turnover in the legislature since Representative Stell came to Santa Fe 17 years ago. Maybe that is why water needs get confused with local pork in legislators' minds. But water is more important than small projects in the districts. If the state does not get the water, there will not be any need for small capital projects because there will not be any people left in New Mexico to benefit from them.

Questions and discussion among the members addressed:

- transfers of water out of the Pecos Basin, such as Bonito Lake water being piped to the Tularosa Basin never to return to the Pecos Basin;
- 5,000 domestic wells between Ruidoso and the Pecos River affecting flow;
- the creation of an Indian water settlement fund to appease the federal government concerning what the state will contribute to settlements with tribes and the potential for the Water Trust Fund to be used for that;
- salt cedar removal results;
- that stakeholders may have to lobby the governor to sign water conservation bills;
- fairness in water rights settlements; and
- the need for consistent water administration policies statewide.

GROUND WATER MANAGEMENT

John Jones, legislative liaison for the rural water users' association, told the committee that conservation is only an interim solution, but if it is not applied to agriculture, it does not mean much on the whole. He said that Senate Bill 554 was a good idea but was too quick on deadlines, and it left out agriculture. He asked who makes the decision on what constitutes best use. The constitution treats all uses equally, he said. He testified that the new criteria for the Estancia Basin issued by the Office of the State Engineer allow too many inchoate rights, which are now twice as much as the actual use. Therefore, any estimation of future depletions are tripled. The state engineer's designation of the basin as a critical management area means that existing water rights cannot be moved. The state engineer automatically grants extensions for use of water from permitted domestic wells even though many of those wells are very old and the estimated use grossly exceeds the actual use. This hurts the valley's economy and distorts the real water situation.

Questions and discussion by the committee addressed:

- conservation programs in the Estancia Valley;
- that households' average use of 200 gallons a day reflects different values of people in this rural area;
- the pumping of septic tanks;
- rate structures of rural water utility systems;
- that there are 180,000 acre-feet of water rights in the basin compared to 60,000 acre-feet actually being pumped and an estimated six million acre-feet of potable water remaining in the basin, with 83 million acre-feet of brackish water; and
- potential inter-basin transfers.

ABANDONED WELLS

Ray Hardy, a domestic water well driller from Lea County, expressed his concern about wells that are not in compliance with good practices as far as well safety. He said that old wells are not properly capped or filled. Lots of them were drilled back in the 1920s or 1930s. Some of those produced 1,000 or 2,000 gallons per minute and made somebody money over the life of the well. Safety should be a responsibility of the user as a price for using public water. He asked the committee to support legislation to require sufficient closure and filling of abandoned wells.

Questions and discussion addressed:

- existing rules;
- directing a letter to the appropriate agency regarding the cost of doing such a thing or to recommend legislation;
- using PVC casing in sandy soil; and
- regulations for standards in each particular area.

SACRAMENTO BASIN ISSUES

Russ Wright and Bobby Melton, representing the eastern mountain chapter of the Sacramento Water Users Association, told the committee that they represent over 100 families. They said that proposed wells in the Salt Basin threaten depletion of water in the basin. Three

groups have applied for water totaling 236,000 acre-feet a year. Mr. Melton and Mr. Wright are worried that the mountain watershed will not sustain this. They asked the committee to make the water administration system equitable by allowing better participation, providing better information on aquifers and watersheds. They said that water is disappearing in the Sacramento Mountains, wells are drying up and streams are disappearing. The Sacramento River is a trickle, they said. Data collection in the area ended in the early 1990s, and they do not know why. There is a great lack of information on existing resources, they said. The state should heed the warnings of those who want to mine the Salt Basin. It is too late if the state engineer issues permits before knowing the consequences. They asked the legislature to fund a study of the Sacramento watershed.

Jim Brochman, attorney for the Last Chance Water Company, one of the applicants for well permits in the Salt Basin, said this may not be the proper place to discuss applications pending before the Office of the State Engineer. He said the law prohibits the state engineer from approving a permit if it impairs existing rights or is against conservation or the public welfare. He disagreed that protests are too difficult.

Jim Scarentino, New Mexico Wilderness Society, told the committee that he is working with the Last Chance Water Company. He said that the federal Bureau of Land Management (BLM) is not taking care of the water there and that some oil company is contaminating certain areas.

Questions and discussion addressed:

- the BLM office that has jurisdiction over the Salt Basin;
- when the state engineer declared the Salt Basin, 2000;
- unappropriated ground water in the basin; and
- where the water will be used — many places in and out of state.

The committee adjourned at 1:00 p.m.

MINUTES
of the
WATER AND NATURAL RESOURCES COMMITTEE

September 18-19, 2003
Elephant Butte

The September 18, 2003 meeting of the Water and Natural Resources Committee was called to order by Senator Carlos R. Cisneros, chair, at 10:05 a.m. at the Quality Inn in Elephant Butte.

PRESENT
Sen. Carlos R. Cisneros, Chair
Rep. Joe M Stell, Vice Chair
Sen. Sue Wilson Beffort
Sen. Dede Feldman
Sen. Mary Jane M. Garcia
Rep. Dona G. Irwin
Rep. Larry A. Larranaga (September 18)
Rep. Andy Nunez
Sen. Mary Kay Papen
Rep. Henry Kiki Saavedra
Rep. Don Tripp
Rep. Robert White

ABSENT
Sen. Joseph J. Carraro
Rep. Joseph Cervantes
Rep. James Roger Madalena
Rep. Brian K. Moore
Sen. Shannon Robinson
Sen. H. Diane Snyder

Advisory Members
Rep. Rhonda S. King
Rep. Danice Picraux
Sen. Leonard Lee Rawson
Rep. Mimi Stewart (September 18)
Sen. Leonard Tsosie (September 19)

Rep. Ray Begaye
Rep. Anna M. Crook
Sen. Clinton D. Harden, Jr.
Sen. Timothy Z. Jennings
Sen. Gay G. Kernan
Sen. Steve Komadina
Rep. Ben Lujan
Sen. Nancy Rodriguez
Rep. Eric A. Youngberg

(Attendance dates are noted for those not present for the entire meeting.)

Staff
Gordon Meeks
Amy Camille Chavez

Guests
The guest list is in the meeting file.

Thursday, September 18

WATER RIGHTS ADJUDICATIONS AND HYDROGRAPHIC SURVEYS

Judge Gerald Valentine, State Engineer John D'Antonio and general counsel of the Office of the State Engineer (SEO) D.L. Sanders discussed the issue of improving the courts' water rights adjudication. Some states, like Colorado, have water courts, Judge Valentine informed the committee, but he said that water courts are not really separate from the existing judiciary. He believes that a judge should instead be appointed in each district to be trained in water law and to preside over water law cases. Stream adjudications that are interrelated might have impacts on other parts of the stream system. He said New Mexico does not really want to do the same thing that Colorado did, which was to give the courts much of the administrative authority that the state engineer now has.

Judge Valentine cited Article 4, Section 34 of the Constitution of New Mexico, which places constraints on any statutory changes that might have the objective of expediting the process. He said that stream adjudications are unique cases in the judiciary because the state engineer requires a hydrographic survey to determine who has the right to use the waters and stream system, which is a public interest. The right to use it is based on the prior appropriation doctrine, which is based on the "first in time, first in right" principle. Since the water codes were filed in 1907 for surface water rights, one must ask the state engineer for a permit. The statutes require looking at ground water and surface water together.

Judge Valentine explained that a stream adjudication process is really an inventory of the title to the right to use the water. The Supreme Court has ruled that this is a property right. A stream adjudication is the same as a deed record in the county clerk's office. If water rights are real property rights, adjudications determine who has the property rights. The adjudication results in a final decree as to who has the right to use the water.

New Mexico does not have a provision to make sure that court decrees on water rights are updated in a timely manner. Judge Valentine asserted that the problems with the Pecos River are occurring partly because the adjudications have not been updated. Institutionalization of this process might be necessary.

Questions and comments from the committee addressed:

- Native Americans' stake in the adjudication process;
- how water is apportioned among the states;
- who gets the money from electric power generated by the Elephant Butte project (the federal Bureau of Reclamation);
- House Bill 744 and the administration of water rights cases; and
- Judge Valentine's recommendation AGAINST adopting the Colorado water court model because it inappropriately places administrative duties of the SEO in the courts, which could be a violation of the separation of powers. He further explained that water issues come before certain judges infrequently and it is better to assign specific judges the responsibility to hear water disputes — this is less expensive than setting up a separate water court.

Mr. Sanders discussed the water rights adjudication process from the perspective of the SEO. Despite ongoing concern that the adjudication process is not moving fast enough, there are thousands of parties involved, and adjudications are moving ahead expeditiously. He explained that the backlog of cases at the SEO occurs due to staffing water rights applications. The value of water rights has increased the number of transactions, yet the number of staff remains the same.

He described how the Rio Grande Compact determines New Mexico's limited supply of water. In wet periods when there is plenty of water, there is no problem, but problems occur in drought periods. Adjudications are required by state law in order to allocate wet water during those drought periods.

All western states' water laws are based on the doctrine of prior appropriation, i.e. first in time, first in right to the water. New Mexico is unique among western states, however, in that the standard for recognition of water rights is "beneficial use" — that is to say that a right is available to a user only so long as the user actually puts the water to beneficial use. The right is abandoned or forfeited if structures for diversion and delivery of water for a beneficial use are not present or the water is not used for a period of time.

He said that the state constitution recognizes prior and existing rights as they were exercised in 1912. Prior to 1912, there was no permitting process and, therefore, documentation of the existing rights at that time presents a dilemma. He also explained that the Treaty of Guadalupe Hidalgo (also part of the state constitution) calls for the recognition of Indian water rights. The order of seniority then puts the pueblos and tribes first. Second in priority would be Spanish and Mexican period acequias. The third-in-priority claimant is the Bureau of Reclamation, which made a claim of all of the unappropriated water as of 1906 in the Rio Grande and the Pecos River. There are very few surface rights recognized after 1912.

Mr. Sanders said that the SEO's mission is to distribute the water to meet as many needs as possible. Improvements in administrative technology make the office more efficient in this mission. Aerial photography of land, global positioning systems (satellite telemetry) and geographic information systems are such technologies.

In explaining the adjudication procedures, Mr. Sanders said that 50 to 60 percent of the plaintiffs accept the state engineer's initial offers of settlement because the hydrographic surveys using these technologies accurately document the water use of water rights users. He said that less than five percent of those who appeal the state engineer's settlement offer can actually demonstrate that the state engineer's surveys were inaccurate.

Because municipalities and domestic water utilities are for the most part junior water rights holders, priority administration poses a dilemma for the state engineer and for those domestic water users. It would be difficult and politically volatile to shut down water for cities in favor of agriculture. But that is what a strict interpretation of the state constitution and state law might require. For that reason, the SEO attempts to avoid priority administration and tries to meet as many needs as possible.

Questions and comments from committee members dealt with:

- sources of water rights to comply with the Endangered Species Act of 1973 or other federal laws;
- when and where the state engineer anticipates that priority administration will be conducted;
- the regulatory process to implement priority administration;
- areas that are going into shortage sharing (Rio Grande, Chama, Animas, Gila, San Juan River, Canadian Basin and Mora area);
- temporary leasing as a method to allocate water;
- proportionate water use as the basis for water shortage sharing;
- municipalities' exercise of eminent domain rights to continue to supply drinking water to cities;
- an expedited transfer process using the water market and water banking;
- the percent of water that belongs to Native Americans and each of the other major categories;
- the state engineer's authority to prevent excessive water use;
- metering of water use and request for a water use report;
- how to determine Indian water rights and basing those rights on beneficial use;
- the Bureau of Reclamation's current rights with respect to the act;
- Native American water rights being subject to forfeiture for nonuse; and
- court jurisdiction for Native American claims (federal district courts).

Mark Fesmire, chief of the hydrographic survey section in the SEO, stated that the Hydrographic Survey Bureau brings the discernible elements of a water right before a court for examination and adjudication. The survey effort determines beneficial use of a water right, the priority date of the water right and conveyance method for the water right. New Mexico does not condone use that is not part of a beneficial use. The bureau must tell the court how much water is being used. The process to do this is through a hydrographic survey. Based on that survey, an "offer of settlement" is made by the state engineer to a water right claimant. The claimant can either accept that offer, negotiate for a counteroffer or appeal. The court then, by decree, turns a claim into an adjudicated water right based upon the survey and any other "evidence" the court wishes to base its decision upon.

Mr. Fesmire presented a chart that shows the anatomy of a hydrographic survey. The steps in a hydrographic survey include information collecting and planning, field data collection, owner interviews, information processing, publication and release and litigation. Mr. Fesmire stated that additional staff in the information collecting and planning phase can reduce costs and litigation.

Dr. Dario Rodriguez-Bejarano discussed aerial imagery and mapping of hydrographic surveys. The use of computers is prevalent at the SEO. In 1996-97, every map was put into the database, which was the Geographic Information System (GIS). The SEO previously used aerial photography, but only recently started producing digital images. Those images can be processed more quickly, thus eventually speeding up the adjudication process. Mr. Rodriguez-Bejarano presented examples of digital maps and maps with infrared technology, which show where

irrigation is occurring. He also provided a summary of the geo-spacial components of a hydrographic survey.

Questions and discussion addressed:

- an individual's right to know about the SEO's negotiations with other individuals within the same stream adjudication;
- the potential for junior water right holders to make claims against senior right holders;
- the use of mediation;
- the cost for hydrographic survey maps;
- cooperation and sharing of information, including United States geological surveys; and
- availability of an aerial digital map of the entire state of New Mexico.

Rick DeSimone discussed the technical needs of the SEO. Technical needs stem from the processes associated with water rights administration, hydrographic surveys and water rights adjudications. The SEO has two databases, including the Water Administration Technical Engineering Resource System (WATERS) and the Water Rights Adjudication Tracking System. The former is a web-based system that includes numbers of water rights owners. The latter has current water rights information and work products for adjudication. Data is entered for each adjudication at the beginning of a hydrographic survey. Mr. DeSimone stated that these processes should be linked to produce a seamless process that would result in an efficient method to communicate changes.

Garth Clark, GIS coordinator for the SEO, explained the process of integrating technologies and the databases. A water right file is composed of the owner, priority date, diversion amount, point of diversion, place of use and purpose of use. Abstracting is a process in which a water right expert organizes a water right file by sorting, comparing, evaluating, inputting and checking data. The next process involves imaging the water right file. The file is scanned with the use of an imaging unit. The next process involves mapping, which requires geographic information technology. The SEO is developing an enterprise geographic information system that will integrate all of the processes, including adjudication and abstracting. The new system would help analyze applicant impacts, water availability, water plans, critical

management areas and hydrographic surveys.

Questions and discussion by the committee addressed:

- whether the geographic information technology is the same technology used by the Bureau of Land Management in its mapping; and
- whether the SEO is getting approval to get information technology funding under the aegis of the state's chief information officer.

Mr. D'Antonio then summarized the presentations made by his staff and stated that much of the staff are employed as term employees. He said that he would like to convert term positions into permanent positions within three years. The adjudication portion is a component of what needs funding, but administration is also an issue in a drought climate.

He told the committee that a statewide water plan will be finalized in a town hall process in September. Members from the Water Trust Board, the Interstate Stream Commission, pueblos and county governments will participate. The SEO must be able to communicate where it is making progress with respect to the WATERS database, which must be completed in order to help prioritize adjudications. The statewide water plan will help prioritize funding.

Questions and discussion were on:

- the number of term employees that the state engineer wants to move to permanent positions (44) and the cost;
- the amount of money appropriated for regional plans; and
- the conservation component of the state water plan.

RIO GRANDE BASIN INITIATIVE

Craig Runyan, New Mexico State University (NMSU), described the Rio Grande Basin Initiative, a joint effort between NMSU and Texas A & M University. The initiative promotes efficient irrigation for water conservation in the Rio Grande Basin. The project has provided training to hundreds of irrigation managers. It examines socio-cultural issues associated with irrigation and looks at household conservation, priority rights appropriations, etc. It has established research results in drip irrigation design, made findings on habitat tolerances of the silvery minnow and is establishing data on the effects of acequias on local hydrology. Mr. Runyan provided a packet containing a progress report for the initiative.

The discussion revealed that in November of last year, significant progress was made in getting an Internet program to give planners access to a model to determine what land use and management plan they might implement to conserve water and facilitate the water planning process. In cooperation with the Middle Rio Grande Conservancy District, the initiative is attempting to determine at what level of water the silvery minnow can continue to survive.

The initiative is also examining impacts from stream flow to acequia systems. Data is showing that in-stream flow has a negative impact on the storage of ground water and has other negative effects. Mr. Runyan also presented photographs from the hydrology modeling effort. Staff of the initiative is mostly funded by soft money.

STATE CLIMATOLOGY

Ted Sammis, state climatologist, made a presentation regarding the state climatology program. The state climatologist was funded by the federal government until 1978, at which time the State of New Mexico created a state climatology position but did not fund it. The state climatologist's job is to assess the state climate's effects on the natural environment, agricultural production, land, natural resources and human health. State law originally housed the state

climatologist in the New Mexico Department of Agriculture (NMDA) until the NMDA ran out of resources and eliminated the state climatologist position. Automated climate stations around the state placed by the state climatologist were taken over by the NMSU College of Agriculture and a memorandum of agreement transferred the responsibilities from the NMDA to the college. Six states have state climatologists located in state agencies. University departments employ state climatologists in other states. Mr. Sammis recommended that the latter approach be adopted by New Mexico because universities create tools for using information gathered through research to develop decisions. The state climatology program also receives several email questions regarding the New Mexico climate. The New Mexico Climate Center (NMCC) maintains the web site for the drought task force. The program also supplies information on insect development and information on water use and requirements. The SEO modeling effort depends upon information about rainfall obtained from the climatology program. The program currently processes 138 climate stations, of which 28 are maintained by the NMCC. The rest are maintained by federal agencies. However, the state obtains the data for each station. The state climatologist position will terminate unless funds are appropriated to hire a new state climatologist. The Extension Support Council from the NMDA has made funding of the state climatology program its top priority.

Questions addressed:

- the state climatologist's other duties;
- pecan tree use analysis needs for information about rainfall for water management;
- west Nile virus and drought problems making the collection of data via the state climatology program a high priority;
- whether the position should be in the NMDA or the NMSU College of Agriculture; and
- the effectiveness of cloudseeding and the state climatologist's analysis of weather modification.

The minutes from August 7 were reviewed and approved by the committee, with one amendment by Senator Feldman. The minutes were adopted by the committee upon a motion by Representative Larranaga and were seconded by Representative White.

The committee recessed at 4:00 p.m.

Friday, September 19

The meeting was reconvened at 9:10 a.m.

MEASUREMENT AND PREDICTION OF EVAPORATION LOSSES

Barbara Kimball from New Mexico EPSCoR introduced Dr. Phil King of NMSU, Dr. Julie Coonrod of the University of New Mexico and Dr. Jan Hendrickx of the New Mexico Institute of Mining and Technology.

Dr. King discussed reservoir evaporation. Much research has been conducted regarding evaporation from Elephant Butte. The evaporation occurs as a result of fluctuations of the lake's surface area. In 2001, a project sponsored by the Bureau of Reclamation and the SEO measured evaporation from the reservoir. Data was collected that showed that actual evaporation was significantly less than was shown using the conventional method of estimating total lake evaporation through the use of scaled "pan evaporation estimates". Thus, the pan evaporation is not a very good estimate of evaporation. Future research should use more reliable methods than the pan evaporation method, he concluded.

Ms. Coonrod discussed riparian evapotranspiration. That process involves water that enters the atmosphere through trees and soil. The water involved in the process is an important part of the water budget, yet it is difficult to measure. The Bosque del Apache and Sevilleta wildlife refuges have towers installed to measure evapotranspiration. Albuquerque's South Valley and cottonwood stands also had data collection devices. It was found that evapotranspiration varies with weather conditions. Evapotranspiration also changes significantly from year to year. Transpiration is directly related to rainfall.

Soil water evaporation is also being separated from the transpiration of the trees. The Bosque del Apache site is the highest transpiration site. Sevilleta is the lowest transpiration site. A different conclusion could be reached if the South Valley's site was altered with salt cedar removal. These are only point measurements, she emphasized. Evapotranspiration from the entire corridor is the relevant data that needs to be collected. When Landsat imagery is used, evapotranspiration maps can be produced. There are many more unanswered questions and long- term data is needed.

Dr. Hendrickx stated that evapotranspiration is a combination of vegetative perspiration and evaporation. Evapotranspiration converts liquid water into vapor and is the only net loss of water seen in a local hydrologic system. If water evaporates, it is lost. In a desert, it is critical to know where and when water is going into the atmosphere. If this information is available, it is possible to develop concepts for conservative water use management to prevent water loss. One measure used in California and in other irrigation projects is ground water table management. Possible ways to conserve water are to use shallow ground water irrigation and drip irrigation systems. To adopt these conservative water use strategies, the effects of these methods should be analyzed. The conclusion of the effort is that New Mexico needs more data regarding evapotranspiration and strategies that might prevent water loss.

One way to examine the effects of evapotranspiration is to implement certain techniques, such as using ground tool measurements to determine whether satellite images are correct. Funding is needed to come up with an operational network of ground measurement sites. Chairman Cisneros suggested that the team bring in information regarding what legislation might be needed to obtain this technology.

Other questions and comments addressed:

- the effects of evapotranspiration on the bosque ecosystem;
- comparison of cottonwood water consumption to salt cedar;

- the effect of evapotranspiration on compliance with the Rio Grande Compact;
- the endorsement by Mr. Fesmire of the work under EPSCoR because the SEO would have to eventually develop this data and spend money on this research;
- thinning forests to reduce forest fires and increase ground recharge, which adds water to local supplies;
- credit pursuant to the Rio Grande Compact for losses due to evapotranspiration;
- the history of research in evapotranspiration;
- evapotranspiration from lawns and golf course turf; and
- support for replacing nonnative trees and grasses with native trees and grasses.

WATER RESOURCES MODELING

Peter Davies of Sandia National Laboratories (SNL) introduced Bob Wessely of the Middle Rio Grande Water Assembly and Ray Finley and Howard Pasell of SNL.

Mr. Wessely discussed the need to balance water use with water supply and emphasized the necessity of water planning in achieving that goal. Water planning points out what supply and demand is and what to do about shortages or surpluses. The Middle Rio Grande Regional Water Planning Project is one of 16 regional planning projects in New Mexico. The water assembly is composed of a diverse set of constituents, which includes the Mid-Region Council of Governments. The region is engaged in "deficit spending" of water. New Mexico's net deficit is 55,000 acre-feet per year. The mission of the water planning effort is to balance the water budget. The middle Rio Grande region's demand for water is probably 25 percent more than supply. The water planning effort is focused on understanding the region's role in broader issues, addressing the wet water problem first and basing the effort upon long-term averages for sustainability. It is also focused on measuring and planning for managing consumptive uses. Some actions that the effort might take to balance the water budget include:

- desalinating/importing brackish water;
- harvesting rainwater;
- modifying the weather;
- reusing pumped water;
- reducing open water evaporation;
- restoring the bosque;
- managing the watershed;
- implementing urban conservation plans;
- implementing rural conservation plans;
- adjusting water pricing;
- metering water uses;
- limiting new domestic wells;
- moderating population growth;
- establishing educational programs;
- adjudicating and enforcing water rights;
- managing new uses of water;
- protecting sensitive areas from contamination;

- centralizing wastewater treatment;
- selecting water per quality needs;
- establishing environmental water rights; and
- establishing substantial funding mechanisms.

Mr. Wessely stated that the important question is how much of each action should be considered. Variables in answering that question might include current overspending, population growth, etc. The effort has developed a collection of actions, analyzed their implications and modeled the results of collections of actions. A multi-constituency working team was also assembled to guide model development. The model can be used to understand the coupling of effects and permits the aggregation of several actions. It also permits viewing of the results in real time and facilitates sufficiency checks. Despite the usefulness of the model, however, it is only one information source. Public values, comments and technical analysis need to be compiled to craft an effective plan. Mr. Wessely concluded that there is a regional problem that needs a regional and balanced solution.

Mr. Pasell discussed cooperative modeling. There are three objectives in adopting the model:

- providing an unbiased tool for quantitative consideration and comparison of water management alternatives and scenarios;
- providing a tool for engaging policymakers, stakeholders and the public in the decision-making process; and
- providing a tool to educate the community about the interconnectedness and complexity of the water system.

The middle Rio Grande cooperative modeling occurs with the help of several entities. The primary partners in model development include SNL, the Middle Rio Grande Water Assembly, the Mid-Region Council of Governments and the Utton Transboundaries Resources

Center. The model can bring insight into the water planning process. Several scenarios can be modeled using changes in such variables as average home water use, evapotranspiration from the bosque, agriculture, reservoir operations, population growth, drought and transfers from upstream and downstream regions. It can also show the effects of residential and nonresidential conversion to low-flow appliances, xeriscaping and bosque control treatments, including elimination of nonnative species. It can map trends resulting from changes in crop types and drought. The effects of various scenarios can be measured by trends in ground water depletion, sewage return flows, pump-induced river leakage and fiscal costs. It also models the ability to meet the Rio Grande Compact balance. The model shows that by the year 2006, there will be a steady decline in the water in the aquifer. Population growth will continue to add to that trend. Mr. Davies stated that there is a need to extend the model for use in the entire Rio Grande Basin when dealing with issues like the silvery minnow and compact deliveries.

Questions dealt with:

- the definition of new uses of water;

- water metering effects;
- SNL's research on purification of saltwater for drinking water;
- desalination as a way to solve the state's problems;
- the model's availability on the Internet and the need for $50,000 to make it so;
- the intention to model the entire state;
- Los Alamos National Laboratory's (LANL's) work on this kind of model;
- the quality of the data input to the model;
- the variable pertaining to Indian water rights in this model;
- the potential for partnerships to be formed by New Mexico Tech, SNL, LANL, etc., to maximize the effectiveness of the model;
- disposition of removed brine from desalination projects;
- water plan completion; and
- balancing domestic well regulation with the needs of communities and the water plan.

ZERONET POWER PLANT WATER CONSERVATION INITIATIVE

Marc Christiansen from Public Service Company of New Mexico (PNM) discussed the ZeroNet power plant water conservation initiative. The effort has been pursuing congressional funding. ZeroNet is working on an effort to meet the cooling needs of the San Juan station. In 2002, funding was sought from the Department of Energy. Regulatory oversight by the state engineer will need to be resolved by the legislature. New technologies for more cost- effective solutions in the future will also be explored.

Dan Macuga from LANL further discussed the ZeroNet program. The goal of the program is to achieve required electric power production in New Mexico with zero net freshwater withdrawals and use capacity by 2010. The program is composed of representatives from LANL, PNM and the Electric Power Research Institute (EPRI). It also includes representatives from a technical steering committee and a stakeholder advisory group. A two-day

session was held to determine the program's focus. The following goals of the program were identified:

- policy analysis and implications;
- education and public outreach; and
- technology development.

There is a need to bring ZeroNet into the water use sectors. The program elements of ZeroNet include the following:

- degraded water use;
- integrated modeling and management scenario assessment;
- economic, risk and market mechanisms;
- efficiency, conservation, recycling and renewables;
- advanced cooling;
- land management;
- monitoring and measurement;

- policy analysis and implications; and
- education and public outreach.

There is $1.5 million identified in the federal fiscal year 2005 appropriations bill for the program. This would be "seed money". Six hundred forty thousand dollars was awarded to PNM/EPRI to investigate the economic feasibility of produced water use in power plants. ZeroNet is also working to expand the partnership to include New Mexico universities and to establish stakeholder advisory groups. ZeroNet is also attempting to establish additional programs with other laboratories in other regions and states. It is also attempting to obtain a secure and permanent funding source.

Questions and comments addressed the need for legislation for the upcoming session, and the committee agreed to send a letter to Senator Domenici supporting ZeroNet.

Representative Tripp discussed water conservation plans for power plants. Representative Tripp introduced a memorial two years ago to study water conservation issues and transmission lines. Proponents of the dry cooling industry brought recommendations. Proponents of dry cooling support it because it uses no water. Opponents think the capital cost is greater, the energy penalty is five percent less and electric bills would go up significantly. Last session, Senator Tsosie had a bill drafted that called for conservation plans to be submitted to the Public Regulation Commission (PRC). Representative Tripp had a similar bill in the house. The bill lowered the threshold for a power plant to be required to submit a conservation plan to 50 megawatts. The water conservation plan was to be reviewed by the SEO and recommendations made to the PRC. The bill also called for extra notification to the public. The bill contained no mandate of which method of cooling was required to be used. The state is going to be building additional plants and exporting more power to California, but should do that

without significant increases in freshwater consumption. Representative Tripp recommended that the committee adopt the same bill as a committee bill.

Questions and comments addressed:

- retrofitting existing power plants; and
- dry cooling plants used in conjunction with the wet systems.

The committee adjourned at 1:00 p.m.

MINUTES
of the
WATER AND NATURAL RESOURCES COMMITTEE

October 16-17, 2003
Room 307, State Capitol

The October 16 meeting of the Water and Natural Resources Committee was called to order by Senator Carlos R. Cisneros, chair, at 10:20 a.m. in Room 307, State Capitol.

PRESENT
Sen. Carlos R. Cisneros, chair
Rep. Joe M Stell, vice chair
Sen. Sue Wilson Beffort (10-17)
Rep. Joseph Cervantes
Sen. Dede Feldman (10-16)
Sen. Mary Jane M. Garcia
Rep. Larry A. Larranaga
Rep. James Roger Madalena
Rep. Andy Nunez
Sen. Mary Kay Papen
Sen. H. Diane Snyder
Rep. Don Tripp (10-16)

ABSENT
Sen. Joseph J. Carraro
Rep. Dona G. Irwin
Rep. Brian K. Moore
Sen. Shannon Robinson
Rep. Henry Kiki Saavedra
Rep. Robert White

Advisory Members
Rep. Anna M. Crook
Rep. Rhonda S. King
Rep. Ben Lujan
Rep. Danice Picraux
Sen. Nancy Rodriguez
Rep. Mimi Stewart
Sen. Leonard Tsosie (10-16)
Rep. Eric A. Youngberg

Rep. Ray Begaye
Sen. Clinton D. Harden, Jr.
Sen. Timothy Z. Jennings
Sen. Gay G. Kernan
Sen. Steve Komadina
Sen. Leonard Lee Rawson

(Attendance dates are noted for those not present for the entire meeting.)

Staff
Gordon Meeks
Jon Boller

Guests
The guest list is in the meeting file.

<u>Thursday, October 16</u>

DROUGHT TASK FORCE REPORT

Dennis Romero of the Office of the State Engineer explained the current drought conditions to the committee. He said that temperatures have been one to four degrees above normal across much of the state, and that July was one of the warmest on record. He said that although precipitation in October has been above normal, from January through August the state was below normal. The Palmer Drought Index has been negative for all climatic regions of the state through August. Reservoir storage in the state is reaching levels not seen since the 1950s and 1970s, and stream flows are well below the 108-year average. Forecast conditions from the Pacific Decadal Oscillation (PDO) are indicating that the region is entering a prolonged drought. The National Oceanic and Atmospheric Administration is also predicting a persistent drought in the southwest. He said that New Mexico would need an average runoff for 20 years to refill Elephant Butte Reservoir. He concluded with the statement that the state is in the middle of a drought, and it needs to mitigate the negative effects and continue planning for long-term drought.

Anne Watkins, special assistant to the state engineer, said that whatever the current situation is, it is common knowledge that the southwest experiences periodic drought, and that there will be a mega-drought someday. Therefore, the state needs to prepare for recurring drought. She explained the five stages of drought, noting that New Mexico is now in the fifth stage, which is the administrative response stage. The governor's Drought Task Force is shifting its focus from emergency response to identifying vulnerabilities to drought and preparing mitigation and management plans. The task force has created several working groups, including a strike team for emergency response, a monitoring work group, a drinking water work group, an agricultural work group, a wildlife and wildfire work group and a recreation, economic development and tourism work group. Each group focuses on strategies to respond to and plan for the effects of drought and to mitigate the socioeconomic impact of drought.

Questions and discussion from the committee addressed:

- that 75 water systems are at risk and the need exists for more collaboration among small water systems, and the need to encourage more regional solutions in both the planning of water systems and the actual delivery of water;
- the state's responses to the droughts of the 1950s and 1970s;
- the need to plan for water development in the state's capital planning process;
- how it is getting so that those who can pay get water, and long-time residents cannot afford water; and
- the hardest hit by drought are the recreation-based businesses, farmers and ranchers and small communities that need drinking water.

John D'Antonio, state engineer, explained the different stages of drought, noting that New Mexico is in the socioeconomic stage, where it is suffering the impact of the drought and that the

state is responding administratively. He listed several stream systems where shortage sharing must be put into effect. These areas are the San Juan River, the Animas and LaPlata rivers, the

Rio Chama, Nambe, Pojoaque, Tesuque, Mora, the Gallinas River, the Mimbres River, the Canadian River and the Rio Penasco. He said that monitoring and metering systems will be needed in these areas. Mr. D'Antonio said that existing statutory authority will be used to appoint water masters to these areas and promulgate rules for administration in each area under the authority granted to him by existing statutes. He said that a manual will be published to describe how each area will be administered to ensure that due process is followed. Administration of these areas will include expedited transfers and enhanced enforcement of existing laws against wasting water and illegal diversions. He said that regarding the silvery minnow, the current biological opinion allowing the river to dry up at certain times gives New Mexico a little breathing room. Construction of a refugio is ensuring that the species survives during these times.

Questions and discussion from the committee addressed:

- drought as a more normal condition than wet years and that the state probably exceeded its sustainable population 20 years ago;
- the duration of any priority administration;
- how much brackish water is available that can be used and environmental issues of dealing with waste byproducts of brackish water treatment; and
- water master duties and flexibility in solving conflicts on local level.

FINANCING WATER MANAGEMENT NEEDS

David Harris, director, and Carlos Romero, legislative liaison, both of the New Mexico Finance Authority, told the committee that there are billions of dollars of unfunded water project needs throughout the state. Mr. Harris said the governor's office has requested Congress to come up with $500 million over the next 10 years, which could match state funding sources over this period. He suggested that the legislature could send a memorial to Congress to encourage this. After discussing the dedication of 10 percent of severence tax revenues or a portion of the state's general obligation bonding capacity to water exclusively, Mr. Harris indicated the possibility of leveraging the California congressional delegation, which wants its CalFed project funded, to include New Mexico's water needs in its legislation. He emphasized, however, that New Mexico needs to have state funding and plans in place to convince Congress that the state is serious about these projects.

Questions and discussion from the committee focused on:

- how the Department of Transportation got a 10-year commitment from the federal government for debt servicing of bonds;
- the lack of federal money being distributed for the South Valley water project despite Congress' approval;
- how water treatment and supply projects have traditionally been local projects and would change the role of the state;
- the Water Trust Board as the fiscal agent for the federal money and the need to spend as projects are needed because there are so many projects that are needed now;

- Navajo and Ute projects are $800 million right off the bat, yet little projects often eat up the fund; and
- over the last four years about $120 million has gone to small water systems; however, getting federal matching funds and diverting the money to big projects could jeopardize completing small water system projects.

FOREST MANAGEMENT PROTOCOLS

Butch Blazer, state forester, told the committee that federal, state and local land management agencies have made a full commitment in allowing the state forester to take the lead in formulating a comprehensive plan for forest watershed restoration and management. He said that tree densities throughout the state are too high and the extensive bark beetle infestation of New Mexico forests is a sign of this. He described how the City of Ruidoso and the Mescalero Apache Tribe collaboration on forest management is a good example of how cooperation among governing jurisdictions can work. He said that, ironically, the fires in the bosque in Albuquerque may help bring funds for its restoration. He said he has a commitment from the U.S. Forest Service that its national fire plan will support the state's plan.

Questions and discussion from the committee dealt with:

- the economic viability of watershed restoration and the need for government subsidies; and
- how the Mescalero Apache Tribe's projects are subject to environmental laws and how the use of science, not economics, guides its policies.

RURAL WATER SYSTEMS ISSUES

Mary Humphrey, attorney for several mutual domestic water users' associations, explained that there is a difference between different public water supply systems under different federal and state laws, that community water systems and mutual domestic water users' associations are not the same legal entities with the same status under state law. She said that not all public water systems under federal definitions are "public" systems, and went on to describe the different kinds of water systems in the New Mexico statutes. She said that the Public Regulation Commission oversees some of these entities, but not all. She continued to explain the role of mutual domestic water users' associations and a brief history of their existence. She said there is a critical need for a single state-level oversight board. A significant problem has been the amount of water rights allocated to mutual domestics by the Office of the State Engineer. These decisions have not been based on actual history and have been out of sync with what other systems have been allowed. To qualify for federal funding, systems must have proof of water rights. Mutual domestics are the oldest water systems in the state and are mostly in the north, but the Office of the State Engineer has denied some of these oldest users their historic water rights.

Matthew Holmes, executive director of the Rural Water Users' Association, summarized federal laws affecting rural users. He said that the cost of compliance with the federal Safe

Drinking Water Act of 1974 is huge. There are 91 contaminants that must be tested for under the act. For example, he said that all systems must comply with the new arsenic standards by 2006. The cost of compliance for small New Mexico systems might be as high as between $374 million to $474 million, with $16 million in yearly operating costs. This translates into $100 per month more in homeowner bills for the arsenic rule alone. New Mexico is estimated to bear 34 percent of the burden of compliance nationwide. But there are many more new rules coming in the next few years from the federal Environmental Protection Agency.

Ms. Humphrey said that most of these systems are falling apart; they are often run by volunteers; and the board members are aging, and no one wants to replace them.

Juan Garcia, a board member of a mutual domestic water association near El Rito, said that his mutual domestic relies on shallow wells and old failing, insufficient lines, and it still has to comply with Safe Drinking Water Act regulations and the new Homeland Security Act rules. He said the federal government demands that systems put up water rights in exchange for federal funding, and not everyone wants to do that. The state needs to look at these systems and how to make them work for the future.

Ben Chavez from Mora told the committee that septic systems installed in the 1940s and 1950s are now polluting the aquifer. Mora has been offered a $5 million grant for a water treatment plant, but it would cost $197,000 a year to operate, and there are not enough customers to pay for that. He said that mutual domestics started out with neighbors sharing the costs of pumping water to their houses, but the mutual domestics are now being asked to solve problems they were not designed to solve.

Questions and comments from the committee addressed:

- the potential for regionalization and collaboration among communities;
- the nature of federal assistance and eligible expenses;
- institutional support, such as an ombudsman, to help in the training of boards for compliance with the Open Meetings Act, water quality standards and federal requirements; and
- the difference in authority between the Office of the State Engineer and the Department of Environment.

CRITICAL MANAGEMENT AREAS

Paul Saavedra and Tom Morrison from the Hydrology Unit of the Office of the State Engineer told the committee that a critical management area (CMA) is declared in an area that is in danger of losing its water — that is, an area where wells are likely to go dry. The main

responsibility is to ensure that there is no impairment of existing wells when there is no unappropriated water left in the area. These are typically areas of heavy use and ground water withdrawal rates that constitute mining. They said there are CMAs designated for six alluvial basins in the state. In these areas, while domestic well use is pretty minor, CMA designations exist because of huge allocations from agricultural or municipal users, which result in no other appropriation being feasible without affecting existing appropriators. Albuquerque wells have

dropped 100 feet since the 1960s, but wells in Estancia Valley have fallen seven feet a year in some places. The boundary of a CMA will be defined in formal guidelines after public input. A CMA will only affect pending applications or changes in existing wells. The state engineer is still required to issue domestic well permits, but may limit the amount allowed to be pumped in a year, say to 0.5 acre-feet instead of the usual three.

In addition to CMAs, there are special administration areas, often due to court orders or due to contamination. They said that even though domestic wells account for less than one percent of the state's water usage, these wells may present problems in specific areas, especially if they are close to a stream or acequia. Domestic wells account for 16,000 acre-feet per year in consumptive use in the state, and this will increase since the Office of the State Engineer had 8,000 applications for domestic wells last year. There are 36,000 wells within one mile of streams or acequias, which come directly out of those surface sources. There are a total of 137,000 thousand domestic wells in the state.

Questions and discussion addressed:

- the number of domestic wells that are metered;
- how much use is due to domestic wells and if they are a problem or not — in some areas, domestic wells account for 90 percent of the draw down;
- how much would metering cost;
- comparison of domestic well use with municipal use — 120,000 acre-feet annually for Albuquerque versus 40,000 acre-feet statewide by domestic wells;
- that Intel uses about 160 acre-feet per year while a quarter of the land irrigated in Estancia Basin uses that much — huge disparity in what that amount of water can be used for and its economic effects;
- how the effect on property values can be manipulated by definition of where CMA boundaries are drawn;
- the discretion of the Office of the State Engineer;
- the nature of an enforcement system if meters are installed;
- a permit fee increase from $5.00 to $500 to generate $2 million or $3 million; and
- that an alternative to changing the ground water well law is to enforce the existing law that provides for priority enforcement against those who impair existing senior rights.

The committee recessed at 4:30 p.m.

Friday, October 17

PRODUCED WATER

Marc Christensen, Public Service Company of New Mexico (PNM), and John Gillis of PNM addressed the committee about the use of produced water for cooling at the San Juan power plant. PNM wants to supplement water supply for cooling at the plant to ensure that the

plant can remain at full production even if there is a water shortage in the San Juan River. They said that PNM would like to treat about 3,000 acre-feet per year, which is 14 percent of the 22,000 acre-feet used annually by the plant. PNM would have to build a pipeline of approximately 35 miles in length to transport the water from the Aztec area to the plant. Waste from treating the water would be disposed of at the plant site. The estimated cost of the project is approximately $40 million, with water being delivered at about $2,000 per acre-foot. The company wants to have a treatment system in operation by the summer of 2004. Mr. Christensen asked the committee to support legislation that will provide for a $1,000 per acre-foot tax credit. He said that PNM is also asking the legislature to clarify the regulatory structure of produced water. The federal Department of Energy has given PNM $400,000 to study this proposal.

Questions and discussion by the committee addressed:

- the scope of the proposed legislation;
- the effect of preexisting pipeline problems in the San Juan area;
- the position of the Office of the State Engineer on this legislation;
- if California or New Mexico benefits from having a net increase in the flow of the San Juan River;
- the status of a settlement with the Navajo Nation on its water rights claims;
- the ability of the state to buy water from the project if needed;
- how much produced water is in the state (80,000 acre-feet);
- a cap on the total value of the tax credit;
- regulatory authority of produced water; and
- the potential to use less water in the cooling process.

STATUS OF WATER CONSERVATION FUND

Ana Marie Ortiz, Department of Environment, explained the purposes and uses of the Water Conservation Fund, which is appropriated to the department for the administration of public water supply programs throughout the state. Money from the fund, along with federal matching funds, is used to ensure compliance with the federal Safe Drinking Water Act. A decreasing level of federal funding, along with new regulations requiring more sampling, has resulted in increased demands on the fund and the need for a general appropriation request for the Drinking Water Bureau of the department.

Ken Smith, fiscal manager for the Drinking Water Bureau of the Department of Environment, reviewed the budget and fiscal status of the Drinking Water Bureau. He noted that costs were up 12.2 percent and revenues were down 6.2 percent. He also presented projections on the health of the Water Conservation Fund under various scenarios. He and Ms. Ortiz urged the committee to support the bureau's continued management of the fund and its request for general appropriation funding.

Questions and discussion by the committee addressed:

- how much the City of Albuquerque contributes to the fund compared to the rest of the state and how much the city benefits compared to the state;

- whether diversion of San Juan-Chama water will result in more testing and arsenic treatment expenditures; and
- new regulations and decreased federal funding.

UTILITY WORKERS CERTIFICATION

Charles Lundstrom, Department of Environment, told the committee that the utility workers certification program is currently operating without a dedicated funding source. He said the department is working with the Water Quality Control Commission on needed changes to the utility workers certification statutes. He explained that the department has worked with the affected various groups and agencies to come up with proposed changes acceptable to all parties. He also discussed earmarking fees for administration and enforcement rather than these fees going into the general fund as they currently do.

Questions and discussion addressed:

- the percentage of the program the fees will cover; and
- concerns about temperature, turbidity and oxygenation levels as they relate to the operation of dams.

DESALINATION PROSPECTS

Mike Hightower, Sandia National Laboratories (SNL), explained that there is a growing concern over diminishing supplies of fresh water worldwide. SNL is involved in studying nontraditional sources of fresh water and, in particular, desalination of brackish water. Currently, desalination plants worldwide supply about one percent of the world's drinking water, mostly from large-scale seawater desalination plants. There is a lot of brackish water in New Mexico, and SNL is involved in research in the Tularosa Basin, which will be a national and international resource for treatment of brackish water and disposal of waste concentrate. Alamogordo, Horizon City and El Paso are all looking at desalination as a source of drinking water. SNL is also involved in the national arsenic treatment technology development program and would like to formulate a program to assist New Mexico communities and state agencies in treating impaired water.

Bill McCamley, a candidate for the Dona Ana County Commission, described the work he did on his graduate research paper at Harvard. He looked at water problems worldwide, with a focus on New Mexico, noting that the population increased by 20 percent in the last 10 years,

and that it will probably continue to do so. He also examined the situation in Tampa Bay, Florida, San Diego, Texas and Israel. Other states have regional water organizations that increase their bonding capacity to help pay for water projects. This may be a good approach for New Mexico, along with better access to information on desalination. Short-term recommendations include establishment of a statewide water plan, financing a brackish water survey, financing the Water Resources Research Institute at New Mexico State University as a clearinghouse for information, creating regional water authorities and provisioning financial packages to help build desalination facilities.

Peter Davies, SNL, urged the committee to support a bill providing for a tax credit to encourage SNL to establish an impaired water treatment program.

Questions and discussion by the committee addressed:

- whether gross receipts tax breaks actually return benefits to the state;
- the cost of water desalination (probably $3.00 to $4.00 per 1,000 gallons depending on concentrations of contaminants in the brackish water);
- military bases' involvement in funding some of these projects; and
- Texas taking water from Alamogordo.

SCIENTIFIC INFORMATION REQUIRED FOR THE STATE WATER PLAN

Dr. Jim Gosz and Dr. Rob Bowman described the EPsCOR plan to study evapotranspiration in the middle Rio Grande and its application for a National Science Foundation grant in 2004. They said they would work with Legislative Council staff to prepare a bill to present to the committee in November.

A motion to adopt minutes carried without objection.

The meeting adjourned at 2:30 p.m.

MINUTES
of the
WATER AND NATURAL RESOURCES COMMITTEE

November 13-14, 2003
Room 307, State Capitol

PRESENT	**ABSENT**
Sen. Carlos R. Cisneros, Chair	Sen. Mary Jane M. Garcia
Rep. Joe M Stell, Vice Chair	Rep. Dona G. Irwin
Sen. Sue Wilson Beffort	Rep. Andy Nunez
Sen. Joseph J. Carraro (11/14)	Sen. Shannon Robinson
Rep. Joseph Cervantes	Rep. Henry Kiki Saavedra
Sen. Dede Feldman	Rep. Robert White
Rep. Larry A. Larranaga	
Rep. James Roger Madalena (11/13)	
Rep. Brian K. Moore	
Sen. Mary Kay Papen	
Sen. H. Diane Snyder	
Rep. Don Tripp	

Advisory Members	
Rep. Anna M. Crook	Rep. Ray Begaye
Sen. Gay G. Kernan	Sen. Clinton D. Harden, Jr.
Rep. Rhonda S. King (11/14)	Sen. Timothy Z. Jennings
Rep. Ben Lujan (11/13)	Sen. Steve Komadina
Rep. Danice Picraux	Sen. Leonard Lee Rawson
Sen. Nancy Rodriguez	
Rep. Mimi Stewart (11/14)	
Sen. Leonard Tsosie (11/14)	
Rep. Eric A. Youngberg	

Dates of attendance are indicated for members who were not present for the entire meeting.

Staff
Gordon Meeks
Jon Boller
Liz Holmes
Larry Matlock

Senator Carlos R. Cisneros called the meeting to order at 10:20 a.m.

<u>Thursday, November 13</u>

STATE WATER PLAN

John D'Antonio, state engineer, and Estevan Lopez, director of the Interstate Stream Commission, presented a preliminary draft of the state water plan. They told the committee that the state plan will include some of the elements of the regional plans, six of which have been completed out of 16. Additionally, three more regional plans have been submitted with their reviews not yet completed. Approximately 29 meetings have been held around the state for public input on the state plan. One thousand five hundred people from 225 communities around the state participated in the meetings.

Mr. D'Antonio stressed that this is a work in progress, which will continue to be refined over time, and that even in its final form, the state plan will continue to be updated. He noted that implementation strategies were included in the plan even though they were not required and went on to describe the various elements of the draft plan and the need for accountability. He also outlined the primary project management plans.

Management plans will cover active resource management and the water adjudication process. According to Mr. D'Antonio, House Bill 744 provided funding that will allow increased attention to ongoing adjudications and improvements in the process. He said the office is still accepting public comments on the state plan and urged people to submit those comments by December 14 to ensure that they will be included.

Mr. Lopez addressed comments received by acequia associations, Indian nations, tribes and pueblos and others. He noted that the Water Trust Board is concerned about including in the plan any elements that might be considered legal water rights determinations.

The committee asked questions about and commented on:

- the difference between salt cedar management and watershed restoration;
- active water resource conservation, gray water use, watershed restoration, etc.;
- negotiations rather than litigation as a means to expedite the water rights adjudication process;
- water transfers and markets;
- how to treat public welfare as a foundation to protest water transfers;
- protection of senior rights;
- domestic wells use less than one percent of water in state and the justification for the focus on that in areas other than critical management areas;
- Native American membership on the Interstate Stream Commission;
- the role of water masters and their authority to fine or enforce water distribution agreements;
- protecting water quality;
- conservation policy;
- land use planning and water planning;
- schedule for completion of the plan; and
- hydrology staff levels at the Office of the State Engineer.

The chairman recognized several people in the audience to speak. Manuel Trujillo told the committee that the acequia associations do not oppose the state plan but they want the Treaty of Guadalupe Hidalgo recognized in the plan. Moises Gonzales talked about land grants and water rights issues. He said that land grants seem to have been taken out of the equation as one

of the interests that are included in the plan, whereas initially they had been included along with acequias. Phelps White, an interstate stream commissioner, told the committee that the commission is giving full support to the state water planning efforts and complimented the staff on their work on the plan.

Questions and comments (continued):

- estimated costs of the process (water projects in general would be $2 to $5 billion—no estimate for every program and policy mentioned in the plan);
- state engineer's authority for getting certain water and where it is used, such as the salt basin water—since otherwise Texas may be getting that water;
- needs for ground water compacts with Texas; and
- salt basin water.

WATER CONSERVATION STRATEGIES

Jean Witherspoon, water conservation coordinator for Albuquerque, representing the Water Conservation Alliance, explained that the organization deals primarily with urban issues rather than agricultural issues. The organization promotes conservation as a permanent practice rather than just a response to drought. She noted that although cities only use about 10 percent of the water in the state, they have borne the brunt of conservation efforts. She urged that there be more metering, reporting and monitoring of water use throughout the state by all users. Funding of many of the state engineer's educational efforts has come from private sources that may not always be available. She outlined several conservation methods that are particularly cost-effective and urged the state to adopt measures that would continue to save water over the long term, such as the use of efficient plumbing fixtures, xeriscaping, recycling water, updated building and plumbing codes, leak repair and pricing of water to discourage overconsumption.

Anne Watkins, special assistant to the state engineer, presented a report from the Drought Task Force's Drinking Water Work Group on its suggestions for a comprehensive statewide municipal and industrial water conservation program. The conservation suggestions include educational programs, technical assistance to communities, market-based incentives, metering, rate setting, local conservation planning, land use planning, community water resource collaboration and improved water conservation efficiency in public facilities.

The committee had questions and comments on:

- measuring the effectiveness of conservation;
- metering;
- land use;
- ensuring that there is water in the pipe before opening an area for development. Counties currently do not have to limit subdivisions in relationship to water availability (optional);
- the real cost of water included in water rates; most systems in the state do not necessarily cover cost of delivery; and

- water prices are inconsistent often with no relation to cost of delivery.

GILA RIVER WATER RIGHTS

Howard Hutchinson, representing the coalition of the Arizona and New Mexico counties, said the state needs to use 18,000 acre-feet of water to ensure that it does not lose the water forever. He said the state will need a lot of money to set up a system, along with money to pay the Central Arizona Project. There is no money in the federal bills dealing with Arizona and New Mexico water. He asked the committee to support a letter to Congress supporting New Mexico's water rights on the Gila River. The chair instructed staff to prepare a letter, with no opposition from the committee.

The committee asked who would own the water.

Estevan Lopez explained two areas of interest on the Gila. The first was the Virden Valley settlement, which allows 2,800 acres to be irrigated, and requires up to 240 acres to be taken out of production with the retirement of its water rights. He said the second area concerns the 18,000 acre-feet New Mexico is entitled to under the 1968 Colorado River Basin Project Act. He explained that the current legislation needs amending to ensure this, and outlined the various issues that are being negotiated so that this may happen. He is currently negotiating to incorporate a $150 million appropriation into a bill to begin paying for estimated project costs of $220 million.

FEDERAL FOREST LAND MANAGEMENT

Abel Camerina, U.S. Forest Service, testified that there are three threats to forests in New Mexico: invasive species (37,000 acres affected by invasive species), unmanaged off-highway vehicle use and general forest health. He emphasized the need for intergovernmental cooperation and coordination and that the forest service cannot do it alone.

The committee asked questions about and commented on:

- the bark beetle problem;
- cutting down and burning dead trees;
- off-road vehicle use and support for an age limit;
- Mescalero Apache thinning operations; and
- programmatic environmental impact statements.

WOOD PELLETS

Rob Davis, Forest Energy, Inc., and president of Pellet Fuels Institute, told the committee that his company produced about 1.3 million tons of pellet fuel last year. He said that biomass is extremely plentiful in the southwest and comes from many sources. Pellets are simply refined biomass, which is much easier to use than raw biomass. In Stockholm, much of the city is heated with hot water from 300-megawatt plants that burn pellets, some of which come from North America. He said that the state needs to envision heating with pellets instead of fossil fuels. The only difference will be that New Mexico can be self-sufficient in providing energy needs. There is no need for a subsidy for this industry. Pellets are half the price of propane and equal to the cost of natural gas delivered to the customer's door. In the long term, he said, pellets can replace other sources of energy. Pellets are far cleaner than most sources of energy. It is a carbon-

neutral fuel, meaning that biomass would otherwise be burned inefficiently or decompose.

He said he was not asking for a bill but urged the state to encourage pellet use in some way, such as converting schools to use pellet heat. This would pay for itself in three to 10 years.

Friday, November 14

PROPOSED LEGISLATION

The committee discussed and endorsed the following measures for introduction in the next regular session:

1. gray water rules by the Environmental Improvement Board;
2. water utility operators' certification standards and training;
3. water harvesting on commercial buildings;
4. water-conserving plumbing devices under building code;
5. general obligation bonding for water projects;
6. domestic well permit fee increase;
7. well drillers' licensing and abandoned well closure;
8. water adjudication process appropriation;
9. produced water tax credit for electric power plants;
10. power plant water conservation;
11. water conservation tax credit for irrigators;
12. Sandia National Laboratories tax credit for desalination research;
13. Sandia model online access, appropriation to state engineer;
14. state climatologist appropriation;
15. NMSU College of Agriculture water quality research, appropriation;
16. state viticulturist appropriation;
17. pink bollworm control, appropriation;
18. salt cedar treatments, appropriation;
19. EPsCOR and hydrologic studies appropriation;
20. aquifer mapping appropriation;
21. bosque restoration coordination by state forester, appropriation;
22. state forest management based on Mescalero model, memorial; and
23. stock pond exemption clarification for livestock only.

SALT CEDAR REMOVAL AND REVEGETATION PROGRAMS

This segment of the committee meeting consisted of an extensive and diverse discussion about the costs, benefits, consequences and management of salt cedar control efforts. The principal speakers were:

Debbie Hughes, director of the New Mexico Association of Soil and Water Conservation Districts;

Steve Harris, a member of the Alliance for the Rio Grande;

Mike Caragan, sales representative of BASF, the manufacturer of the herbicide, Arsenal;

Gary Lynch, a farmer/rancher from the Roswell area; and

Carl Madison, a farmer/rancher also from the Pecos River Valley.

The major focus of the discussion was on the efficacy of the use of Arsenal. Ms. Hughes testified that herbicide use is the most efficinet and effective strategy for elimination of salt cedar; Mr. Harris and the ranchers charged that herbicides are responsible for the death of grass in pastures owned by the ranchers and that the ranchers have not been adequately restituted for the damage. Ms. Hughes and Mr. Caragan said that the herbicide has been proven to be safe and that its effects do not persist for more than one season; the cause of the grass not growing this

year is a drought. Mr. Madison and Mr. Lynch maintained that their hay fields are subsurface-irrigated; the lack of water is the culprit for their loss of pasturage.

The rest of the discussion was a series of elaborations on the basic charges and countercharges.

Committee members debated the funding request for more salt cedar removal and agreed to endorse the requested appropriations with two conditions, that half of the money be spent on revegetation of native plants following salt cedar removal efforts and that a cost benefit analysis be completed to demonstrate the effectiveness of the program.

BOSQUE MANAGEMENT

Gina Dello Russo, Bosque del Apache National Wildlife Refuge, told the committee that planning, implementation and monitoring are the three basic steps to resource management. Adaptive management has been added to these. For bosque management, planning is critical because of the current condition of riparian habitats. Implementation and monitoring will provide the opportunity to improve techniques. She reminded the committee that there are a number of organizations working toward various goals on the Rio Grande with different levels and sources of funding, different techniques applied and different sustainability of their projects. She gave examples of the various efforts, complimenting their commitment to the health of the river, but added that the long-term success of all of them will be greatly improved by coordination and collaboration.

Committee questions and comments included:

- restoration of the bosque is the key;
- what coordination means;
- the history of the Bosque del Apache Habitat Improvement Program; and
- the most cost-efficient salt cedar removal techniques used on the wildlife refuge.

The committee approved the minutes from the previous meeting.

WATER TRUST BOARD ISSUES

Paula Garcia and Eileen Grevey Hillson, Water Trust Board members, read a statement from Trudy Valerio Healy, chairwoman of the board, and told the committee that the board is in the midst of selecting proposals to recommend to the legislature during the upcoming session. The funding gap between what has been proposed and what funds will be available is tremendous. They testified that 124 letters of interest requesting a total of $535 million have been received by the board. Full proposals from 26 applicants were invited. The sum of their funding requests totals $313 million. The board has been advised to expect $13.2 million to be available as a result of the severance tax bonding measure that the legislature enacted earlier this year. Therefore, there is a gap of $300 million. The majority of these projects are justified to ensure that New Mexicans have safe, reliable sources of water needed to sustain themselves and future generations, as well as to protect the state's environment. There is not enough money to fund all projects, and the board has been told that alternative state funds to which it might have turned in the past are now all but depleted.

Ms. Garcia and Ms. Hillson said that the Water Project Finance Act, which created the Water Trust Board and Water Project Fund, was co-sponsored by Vice Chair Stell and is a true legacy piece of legislation, establishing a viable mechanism for financing the state's water needs

now and into the future. However, meeting the needs is going to require additional recurring sources of revenue. Although there are many competing needs for state dollars, New Mexico is uniquely positioned in Congress to acquire needed federal funding if it can commit the necessary state match. They urged the committee to consider traditional state funding options, as well as any other promising new potential revenue sources when drafting legislation for the upcoming session.

The committee asked questions and commented on:

- criteria for prioritizing projects;
- options for financing the Water Trust Fund;
- lists of specific projects proposed for funding by the Water Trust Board;
- why legislation to fund the Water Trust Fund and the Project Fund has failed;
- emergency needs;
- trade-offs among financing formulas;
- water user fees;
- the role of the New Mexico Finance Authority;
- two-thirds of the applications coming from Santa Fe County;
- redirecting part of the permanent fund to the Water Trust Fund; and
- streams of revenue.

The committee adjourned at 5:10 p.m.

APPENDIX

ENDORSED BILLS

HOUSE BILL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

DISCUSSION DRAFT

FOR THE

WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO WATER QUALITY; PROVIDING FOR RESIDENTIAL LANDSCAPE USE OF GRAY WATER; AMENDING SECTIONS OF THE ENVIRONMENTAL IMPROVEMENT ACT; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 74-1-3 NMSA 1978 (being Laws 1971, Chapter 277, Section 3, as amended) is amended to read:

"74-1-3. DEFINITIONS.--As used in the Environmental Improvement Act:

A. "board" means the environmental improvement board;

B. "department" or "environmental improvement department" means the department of environment;

C. "gray water" means untreated household wastewater that has not come in contact with toilet waste and includes wastewater from bathtubs, showers, washbasins, clothes washing

machines and laundry tubs, but does not include wastewater from kitchen sinks or dishwashers or laundry water from the washing of material soiled with human excreta, such as diapers;

[~~C.~~] D. "on-site liquid waste system" means a liquid waste system, or part thereof, serving a dwelling, establishment or group, and using a liquid waste treatment unit designed to receive liquid waste followed by either a soil treatment or other type of disposal system. "On-site liquid waste system" includes holding tanks and privies but does not include systems or facilities designed to receive or treat mine or mill tailings or wastes. "On-site liquid waste system" does not include a gray water distribution system;

[~~D.~~] E. "person" means the state or any agency, institution or political subdivision thereof, any public or private corporation, individual, partnership, association or other entity and includes any officer or governing or managing body of any political subdivision or public or private corporation;

[~~E.~~] F. "residential on-site liquid waste system" means an on-site liquid waste system serving up to four dwelling units; and

[~~F.~~] G. "secretary" means the secretary of environment."

Section 2. Section 74-1-7 NMSA 1978 (being Laws 1971, Chapter 277, Section 10, as amended by Laws 2000, Chapter 86,

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Section 1 and also by Laws 2000, Chapter 96, Section 1) is amended to read:

"74-1-7. DEPARTMENT--DUTIES.--

A. The department is responsible for environmental management and consumer protection programs. In that respect, the department shall maintain, develop and enforce rules and standards in the following areas:

(1) food protection;

(2) water supply, including implementing a capacity development program to assist water systems in acquiring and maintaining technical, managerial and financial capacity in accordance with Section 1420 of the federal Safe Drinking Water Act and establishing administrative penalties for enforcement;

(3) liquid waste, including exclusive authority to collect on-site liquid waste system fees that are no more than the average charged by the contiguous states to New Mexico for similar permits and services and to implement and administer an inspection and permitting program for on-site liquid waste systems;

(4) air quality management as provided in the Air Quality Control Act;

(5) radiation control as provided in the Radiation Protection Act;

(6) noise control;

(7) nuisance abatement;

(8) vector control;

(9) occupational health and safety as provided in the Occupational Health and Safety Act;

(10) sanitation of public swimming pools and public baths;

(11) plumbing, drainage, ventilation and sanitation of public buildings in the interest of public health;

(12) medical radiation, health and safety certification and standards for radiologic technologists as provided in the Medical Radiation Health and Safety Act;

(13) hazardous wastes and underground storage tanks as provided in the Hazardous Waste Act; and

(14) solid waste as provided in the Solid Waste Act.

B. Nothing in Subsection A of this section imposes requirements for the approval of subdivision plats in addition to those required elsewhere by law. Nothing in Subsection A of this section preempts the authority of any political subdivision to approve subdivision plats.

C. Nothing in this section imposes requirements for a permit to apply less than two hundred fifty gallons per day of private residential gray water originating from a residence for the resident's household gardening, composting or landscape irrigation if:

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(1) a constructed gray water distribution system provides for overflow into the sewer system or on-site wastewater treatment and disposal system;

(2) a gray water storage tank is covered to restrict access and to eliminate habitat for mosquitos or other vectors;

(3) a gray water system is sited outside of a floodway;

(4) gray water is vertically separated at least five feet above the ground water table;

(5) gray water pressure piping is clearly identified as a nonpotable water conduit;

(6) gray water is used on the site where it is generated and does not run off the property lines;

(7) gray water is applied in a manner that minimizes the potential for contact with people or domestic pets;

(8) ponding is avoided and application of gray water is managed to minimize standing water on the surface and to ensure that the hydraulic capacity of the soil is not exceeded;

(9) gray water is not sprayed;

(10) gray water is not discharged to a watercourse; and

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(11) gray water use within municipalities or counties complies with all applicable municipal or county ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978."

Section 3. Section 74-1-8 NMSA 1978 (being Laws 1971, Chapter 277, Section 11, as amended by Laws 2000, Chapter 86, Section 2 and also by Laws 2000, Chapter 96, Section 2) is amended to read:

"74-1-8. BOARD--DUTIES.--

A. The board is responsible for environmental management and consumer protection. In that respect, the board shall promulgate rules and standards in the following areas:

(1) food protection;

(2) water supply, including a capacity development program to assist water systems in acquiring and maintaining technical, managerial and financial capacity in accordance with Section 1420 of the federal Safe Drinking Water Act and rules authorizing imposition of administrative penalties for enforcement;

(3) liquid waste, including exclusive authority to establish on-site liquid waste system fees that are no more than the average charged by the contiguous states to New Mexico for similar permits and services and to implement and administer an inspection and permitting program for on-site liquid waste systems;

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(4) air quality management as provided in the Air Quality Control Act;

(5) radiation control as provided in the Radiation Protection Act;

(6) noise control;

(7) nuisance abatement;

(8) vector control;

(9) occupational health and safety as provided in the Occupational Health and Safety Act;

(10) sanitation of public swimming pools and public baths;

(11) plumbing, drainage, ventilation and sanitation of public buildings in the interest of public health;

(12) medical radiation, health and safety certification and standards for radiologic technologists as provided in the Medical Radiation Health and Safety Act;

(13) hazardous wastes and underground storage tanks as provided in the Hazardous Waste Act; and

(14) solid waste as provided in the Solid Waste Act.

B. Nothing in Subsection A of this section imposes requirements for the approval of subdivision plats in addition to those required elsewhere by law. Nothing in Subsection A of this section preempts the authority of any political subdivision to approve subdivision plats.

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C. Administrative penalties collected pursuant to Paragraph (2) of Subsection A of this section shall be deposited in the water conservation fund.

D. On-site liquid waste system fees shall be deposited in the liquid waste fund.

E. Nothing in this section imposes requirements for a permit for applying less than two hundred fifty gallons per day of private residential gray water originating from a residence for the resident's household gardening, composting or landscape irrigation if:

(1) a constructed gray water distribution system provides for overflow into the sewer system or on-site wastewater treatment and disposal system;

(2) a gray water storage tank is covered to restrict access and to eliminate habitat for mosquitos or other vectors;

(3) a gray water system is sited outside of a floodway;

(4) gray water is vertically separated at least five feet above the ground water table;

(5) gray water pressure piping is clearly identified as a nonpotable water conduit;

(6) gray water is used on the site where it is generated and does not run off the property lines;

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(7) gray water is applied in a manner that minimizes the potential for contact with people or domestic pets;

(8) ponding is avoided and application of gray water is managed to minimize standing water on the surface and to ensure that the hydraulic capacity of the soil is not exceeded;

(9) gray water is not sprayed;

(10) gray water is not discharged to a watercourse; and

(11) gray water use within municipalities or counties complies with all applicable municipal or county ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978."

Section 4. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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HOUSE BILL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

DISCUSSION DRAFT

FOR THE

WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO WATER; AMENDING A SECTION OF THE CONSTRUCTION INDUSTRIES LICENSING ACT TO PROVIDE FOR MINIMUM STANDARDS FOR THE COLLECTION OF PRECIPITATION FROM COMMERCIAL BUILDINGS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 60-13-44 NMSA 1978 (being Laws 1967, Chapter 199, Section 52, as amended) is amended to read:

"60-13-44. TRADE BUREAUS--STANDARDS--CONFLICTS.--

A. The electrical bureau shall recommend to the commission minimum standards for the installation or use of electrical wiring. The recommendations shall substantially embody the applicable provisions of an electrical code for safety to life and property promulgated by a nationally recognized association and developed through an open, balanced consensus process.

B. The mechanical bureau shall recommend to the commission minimum standards for the installation of all fixtures, consumers' gas pipe, appliances and materials installed in the course of a mechanical installation. The recommendations shall be in substantial conformity with codes and standards that are developed through an open, balanced consensus process. Manufacturers may choose the independent certification organization they wish to certify their products, if the certification organization is accredited by the American national standards institute or other accreditation organization selected by the commission.

C. The general construction bureau shall recommend to the commission minimum standards for the construction, alteration or repair of buildings, except for those activities within the jurisdiction of the electrical bureau or the mechanical bureau. The recommendations shall substantially embody the applicable provisions of a nationally recognized building code that is developed through an open, balanced consensus process and shall give due regard to physical, climatic and other conditions peculiar to New Mexico. The standards shall include the authority to permit or deny occupancy of existing and new buildings or structures and authority to accept or deny the use of materials manufactured within or without the state. The general construction bureau

may set minimum fees or charges for conducting tests to verify claims or specifications of manufacturers.

D. The general construction bureau shall recommend to the commission minimum standards for requiring all new construction of commercial buildings that have landscaping to provide for collection of precipitation from roof surfaces. The minimum standards may include standards for collection surfaces and conveyance systems, inlet flushes or filters, storage in tanks or cisterns, retrieval, distribution, monitoring, overflows and spillways, vermin control and operations and management. The water collected shall be used for native landscaping and may be used for nonpotable uses in the building. These standards shall apply to all water harvesting from roofs.

[~~D.~~] E. The general construction bureau shall recommend to the commission additional specifications for any public building constructed in the state through expenditure of state, county or municipal funds, bonds and other revenues, which specifications shall embody standards making the building accessible to individuals who are physically handicapped, and the specifications shall conform substantially with those contained in a nationally recognized standard for making public facilities accessible to the physically handicapped that is developed through an open, balanced consensus process. All orders and rules recommended by the general construction bureau

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and adopted by the commission under the provisions of this section shall be printed and distributed to all licensed contractors, architects and engineers and to the governor's committee on concerns of the handicapped. The orders and rules shall take effect on a date fixed by the commission, which shall not be less than thirty days after their adoption by the commission, and shall have the force of law.

[~~E.~~] F. The general construction bureau shall have the right of review of all specifications of public buildings and the responsibility to ensure compliance with the adopted standards.

[~~F.~~] G. All political subdivisions of the state are subject to the provisions of codes adopted and approved under the Construction Industries Licensing Act. Such codes constitute a minimum requirement for the codes of political subdivisions.

[~~G.~~] H. The trade bureaus within their respective jurisdictions shall recommend to the commission standards that are developed through an open, balanced consensus process for the installation or use of electrical wiring, the installation of all fixtures, consumers' gas pipe, appliances and materials installed in the course of mechanical installation and the construction, alteration or repair of all buildings intended for use by the physically handicapped or persons requiring special facilities to accommodate the aged. The

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recommendations shall give due regard to physical, climatic and other conditions peculiar to New Mexico.

[~~H.~~] I. The trade bureaus within their respective jurisdictions shall recommend to the commission standards for the construction, alteration, repair, use or occupancy of manufactured commercial units, modular homes and premanufactured homes. The recommendations shall substantially embody the applicable provisions or standards for the safety to life, health, welfare and property approved by the nationally recognized standards association and developed through an open, balanced consensus process and shall give due regard to physical, climatic and other conditions peculiar to New Mexico. Wherever existing state codes or standards conflict with the codes and standards adopted by the commission under the provisions of this subsection, the provisions of the New Mexico Uniform Building Code, the New Mexico Electrical Code, the New Mexico Plumbing Code or the Natural Gas Code of New Mexico shall exclusively apply and control, except for codes and standards for mobile housing units.

[~~I.~~] J. Modular homes and premanufactured homes in existence at the time of the effective date of the Construction Industries Licensing Act shall have their use or occupancy continued if such use or occupancy was legal on the effective date of that act, provided such continued use or occupancy is not dangerous to life. Any change in the use or occupancy or

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any major alteration or repair of a modular home or premanufactured home shall comply with all codes and standards adopted under the Construction Industries Licensing Act.

[~~J.~~] K. The commission shall review all recommendations made under the provisions of this section and shall by rule adopt standards and codes that substantially comply with the requirements of this section that apply to the recommendations of the trade bureaus."

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HOUSE JOINT MEMORIAL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

DISCUSSION DRAFT

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

A JOINT MEMORIAL

REQUESTING THE CONSTRUCTION INDUSTRIES DIVISION TO ADOPT PROVISIONS IN THE BUILDING CODE AND THE PLUMBING CODE TO PROVIDE FOR THE MOST EFFICIENT WATER-USING APPLIANCES SUCH AS DUAL FLUSH TOILETS.

WHEREAS, the current drought illustrates the state's critical need to conserve water; and

WHEREAS, everyone uses water and conservation is everyone's responsibility; and

WHEREAS, the state's margin of compliance with interstate compacts and the federal Endangered Species Act of 1973 is in the range of a few thousand acre-feet, and every conservation effort can contribute to the whole;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the construction industries division

of the regulation and licensing department be requested to adopt provisions in the building code and the plumbing code to provide for the most efficient water-using appliances such as dual flush toilets and other water conservation technologies; and

BE IT FURTHER RESOLVED that copies of this memorial be transmitted to the secretary of regulation and licensing, the construction industries commission and the director of the construction industries division.

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SENATE BILL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

DISCUSSION DRAFT

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO WATER; AMENDING A SECTION OF THE CONSTRUCTION INDUSTRIES LICENSING ACT TO PROVIDE FOR MINIMUM STANDARDS FOR THE COLLECTION OF PRECIPITATION FROM COMMERCIAL BUILDINGS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 60-13-44 NMSA 1978 (being Laws 1967, Chapter 199, Section 52, as amended) is amended to read:

"60-13-44. TRADE BUREAUS--STANDARDS--CONFLICTS.--

A. The electrical bureau shall recommend to the commission minimum standards for the installation or use of electrical wiring. The recommendations shall substantially embody the applicable provisions of an electrical code for safety to life and property promulgated by a nationally recognized association and developed through an open, balanced consensus process.

B. The mechanical bureau shall recommend to the commission minimum standards for the installation of all fixtures, consumers' gas pipe, appliances and materials installed in the course of a mechanical installation. The recommendations shall be in substantial conformity with codes and standards that are developed through an open, balanced consensus process. Manufacturers may choose the independent certification organization they wish to certify their products, if the certification organization is accredited by the American national standards institute or other accreditation organization selected by the commission.

C. The general construction bureau shall recommend to the commission minimum standards for the construction, alteration or repair of buildings, except for those activities within the jurisdiction of the electrical bureau or the mechanical bureau. The recommendations shall substantially embody the applicable provisions of a nationally recognized building code that is developed through an open, balanced consensus process and shall give due regard to physical, climatic and other conditions peculiar to New Mexico. The standards shall include the authority to permit or deny occupancy of existing and new buildings or structures and authority to accept or deny the use of materials manufactured within or without the state. The general construction bureau

may set minimum fees or charges for conducting tests to verify claims or specifications of manufacturers.

D. The general construction bureau shall recommend to the commission minimum standards for requiring all new construction of commercial buildings that have landscaping to provide for collection of precipitation from roof surfaces. The minimum standards may include standards for collection surfaces and conveyance systems, inlet flushes or filters, storage in tanks or cisterns, retrieval, distribution, monitoring, overflows and spillways, vermin control and operations and management. The water collected shall be used for native landscaping and may be used for nonpotable uses in the building. These standards shall apply to all water harvesting from roofs.

[~~D.~~] E. The general construction bureau shall recommend to the commission additional specifications for any public building constructed in the state through expenditure of state, county or municipal funds, bonds and other revenues, which specifications shall embody standards making the building accessible to individuals who are physically handicapped, and the specifications shall conform substantially with those contained in a nationally recognized standard for making public facilities accessible to the physically handicapped that is developed through an open, balanced consensus process. All orders and rules recommended by the general construction bureau

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and adopted by the commission under the provisions of this section shall be printed and distributed to all licensed contractors, architects and engineers and to the governor's committee on concerns of the handicapped. The orders and rules shall take effect on a date fixed by the commission, which shall not be less than thirty days after their adoption by the commission, and shall have the force of law.

[~~E.~~] F. The general construction bureau shall have the right of review of all specifications of public buildings and the responsibility to ensure compliance with the adopted standards.

[~~F.~~] G. All political subdivisions of the state are subject to the provisions of codes adopted and approved under the Construction Industries Licensing Act. Such codes constitute a minimum requirement for the codes of political subdivisions.

[~~G.~~] H. The trade bureaus within their respective jurisdictions shall recommend to the commission standards that are developed through an open, balanced consensus process for the installation or use of electrical wiring, the installation of all fixtures, consumers' gas pipe, appliances and materials installed in the course of mechanical installation and the construction, alteration or repair of all buildings intended for use by the physically handicapped or persons requiring special facilities to accommodate the aged. The

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recommendations shall give due regard to physical, climatic and other conditions peculiar to New Mexico.

[~~H.~~] I. The trade bureaus within their respective jurisdictions shall recommend to the commission standards for the construction, alteration, repair, use or occupancy of manufactured commercial units, modular homes and premanufactured homes. The recommendations shall substantially embody the applicable provisions or standards for the safety to life, health, welfare and property approved by the nationally recognized standards association and developed through an open, balanced consensus process and shall give due regard to physical, climatic and other conditions peculiar to New Mexico. Wherever existing state codes or standards conflict with the codes and standards adopted by the commission under the provisions of this subsection, the provisions of the New Mexico Uniform Building Code, the New Mexico Electrical Code, the New Mexico Plumbing Code or the Natural Gas Code of New Mexico shall exclusively apply and control, except for codes and standards for mobile housing units.

[~~I.~~] J. Modular homes and premanufactured homes in existence at the time of the effective date of the Construction Industries Licensing Act shall have their use or occupancy continued if such use or occupancy was legal on the effective date of that act, provided such continued use or occupancy is not dangerous to life. Any change in the use or occupancy or

underscored material = new
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any major alteration or repair of a modular home or premanufactured home shall comply with all codes and standards adopted under the Construction Industries Licensing Act.

[~~J.~~] K. The commission shall review all recommendations made under the provisions of this section and shall by rule adopt standards and codes that substantially comply with the requirements of this section that apply to the recommendations of the trade bureaus."

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SENATE BILL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

DISCUSSION DRAFT

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO WATER; CREATING THE DOMESTIC WELL IMPACT FUND; IMPOSING AN APPLICATION FEE AND A DOMESTIC WELL IMPACT FEE FOR NEW DOMESTIC WELLS; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 72, Article 12 NMSA 1978 is enacted to read:

"[NEW MATERIAL] DOMESTIC WELL APPLICATION FEE--DOMESTIC WELL IMPACT FEE--AMOUNTS--DISPOSITION.--

A. Upon application for the use of underground water for domestic purposes pursuant to Section 72-12-1 NMSA 1978, the applicant shall pay to the state engineer an application fee of two hundred dollars ($200) for a single household well. For a shared household well, the application fee shall be one

thousand dollars ($1,000). For a shared well that will serve a subdivision of three or more lots, a domestic well impact fee shall be collected in the amount of two thousand five hundred dollars ($2,500). Upon completion of the well and before use of the water, the permit holder shall submit to the state engineer a well log certifying the completion of the well. The domestic well impact fee shall be refunded if the well driller's log submitted to the state engineer documents that the completed well is not a producing well.

B. Fees collected pursuant to this section shall be deposited in the domestic well impact fund.

C. For the purposes of this section, "domestic purposes" means the use of public waters for household uses and for irrigation not to exceed one acre of noncommercial trees, lawn or garden."

Section 2. A new section of Chapter 72, Article 12 NMSA 1978 is enacted to read:

"[NEW MATERIAL] DOMESTIC WELL IMPACT FUND--CREATED--USE.--The "domestic well impact fund" is created in the state treasury. The fund shall consist of money appropriated, allocated or otherwise accrued to the fund. Money in the fund is appropriated to the state engineer for the purchase of water rights to offset the effects of domestic well pumping in critical management areas or stream corridor areas and for expenses associated with metering, measuring and administering

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water uses. Money in the fund may be expended upon vouchers signed by the secretary of finance and administration. Money in the fund shall not revert at the end of any fiscal year."

Section 3. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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HOUSE BILL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

DISCUSSION DRAFT

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO OCCUPATIONAL LICENSES; ENACTING THE WATER WELL DRILLERS LICENSING ACT; REQUIRING LICENSURE; PRESCRIBING POWERS AND DUTIES; CREATING A FUND; PROVIDING PENALTIES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 11 of this act may be cited as the "Water Well Drillers Licensing Act".

Section 2. [NEW MATERIAL] DEFINITIONS.--As used in the Water Well Drillers Licensing Act:

A. "water well" includes water-producing wells, monitoring wells that are not subject to regulation by the energy, minerals and natural resources department and injection

wells associated with aquifer storage or return flow credits; and

B. "water well driller" means a person licensed by the state engineer to drill a water well.

Section 3. [NEW MATERIAL] LICENSE REQUIRED.--

A. It is unlawful for a person to:

(1) drill a water well without being licensed pursuant to the Water Well Drillers Licensing Act; or

(2) represent himself as a water well driller unless he is licensed pursuant to the Water Well Drillers Licensing Act.

B. A driller trainee who is under the direct on-site supervision of a water well driller is exempted from the provisions of this section.

C. A person who constructs a driven well is exempted from the provisions of this section if the outside diameter of the casing of that well does not exceed two and three-eighths inches.

Section 4. [NEW MATERIAL] STATE ENGINEER--DUTIES.--The state engineer shall:

A. adopt rules to carry out the provisions of the Water Well Drillers Licensing Act and enforce the rules;

B. conduct an examination process for licensure and issue licenses;

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C. establish requirements for continued proficiency in water well drilling; and

D. establish ethical standards of conduct for water well drillers, including that a water well driller shall:

(1) disclose to the client and the state engineer all known adverse conditions about the quantity and quality of ground water in the area of a prospective well;

(2) recommend that clients have well water analyzed;

(3) inform the state engineer of any unethical or unauthorized conduct of another water well driller known to the water well driller;

(4) accurately represent to the prospective client the qualifications and capabilities of the water well driller and the driller's equipment;

(5) not offer to perform services except in the class of well for which the water well driller is licensed and qualified by experience or knowledge;

(6) not evade contractual responsibility;

(7) not enter into a partnership or agreement with or give water well drilling equipment to a person not legally qualified to perform the services to be rendered; and

(8) not falsely promote services, mislead or deceive.

Section 5. [NEW MATERIAL] STATE ENGINEER--POWERS.--The state engineer may:

A. obtain an injunction in district court against a person who drills a well in violation of the provisions of the Water Well Drillers Licensing Act;

B. suspend or revoke, upon notice and hearing, a water well driller's license for violation of the Water Well Drillers Licensing Act or rules adopted pursuant to that act;

C. recover in the district court of the county where the well involved is located any damages caused by a well drilled in violation of the Water Well Drillers Licensing Act; and

D. recover a civil penalty on behalf of the state in the amount of one thousand dollars ($1,000).

Section 6. [NEW MATERIAL] REQUIREMENTS FOR LICENSURE--RENEWAL.--The state engineer shall issue or renew a biennial license as a water well driller to an applicant who:

A. files a completed application accompanied by a license application fee of twenty-five dollars ($25.00) and a license or renewal fee to be established by the state engineer of not more than four hundred dollars ($400);

B. is at least eighteen years of age;

C. for a new license, passes the national ground water association certification examination or an equivalent examination as determined by the state engineer;

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D. for license renewal, applies for renewal no more than thirty days after the expiration of the license and completes at least eight hours of continuing education credits in courses approved by the state engineer; and

E. agrees to comply with the rules established by the state engineer.

Section 7. [NEW MATERIAL] LICENSE AND REGISTRATION TERMS.--

A. The water well drilling license shall be displayed in a conspicuous place in the water well driller's principal place of business.

B. A water well driller shall notify the state engineer within thirty days after a change of address or of any other information required under conditions of the license.

C. A water well drilling license is not transferable or reassignable.

Section 8. [NEW MATERIAL] BOND REQUIRED.--A license shall not be issued pursuant to the Water Well Drillers Licensing Act unless the applicant files with the state engineer a surety bond in the sum of ten thousand dollars ($10,000) ensuring the applicant's compliance with the provisions of the Water Well Drillers Licensing Act.

Section 9. [NEW MATERIAL] DENIAL, SUSPENSION OR REVOCATION OF LICENSE.--In accordance with procedures set forth in the Uniform Licensing Act, the state engineer may deny,

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suspend or revoke a license held or applied for under the Water Well Drillers Licensing Act upon grounds that the water well driller or applicant:

A. made a false statement or gave false information in connection with an application for a license or renewal or reinstatement of a license; or

B. willfully violated any provision of the Water Well Drillers Licensing Act or rules established pursuant to that act.

Section 10. [NEW MATERIAL] FUND CREATED.--The "water well drillers fund" is established in the state treasury. License and examination fees received by the state engineer pursuant to the Water Well Drillers Licensing Act shall be deposited in the fund and are appropriated to the state engineer for the administration of that act. The state treasurer shall invest the fund as other state funds are invested, and all income derived from the fund shall be credited to the fund. All money in the fund is appropriated to the state engineer to carry out provisions of the Water Well Drillers Licensing Act. Disbursements from the fund shall be drawn on warrants of the secretary of finance and administration pursuant to vouchers signed by the state engineer or the state engineer's authorized representative. Balances in the fund shall remain in the fund and shall not revert to the general fund.

Section 11. [NEW MATERIAL] PENALTIES.--

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A. A person who fraudulently represents himself to be a water well driller is guilty of a misdemeanor and shall be punished by a definite term of imprisonment of less than one year or a fine of not more than one thousand dollars ($1,000) or both.

B. A person who violates a provision of the Water Well Drillers Licensing Act, except as provided for in Subsection A of this section, is guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500). Each day that a violation continues shall be construed as a separate offense for the purposes of this subsection.

Section 12. Section 72-12-15 NMSA 1978 (being Laws 1949, Chapter 178, Section 4) is amended to read:

"72-12-15. UNAUTHORIZED DRILLING--RELIEF.--[~~No person owning or controlling lands shall permit the drilling of a well thereon for water from an underground source, as herein defined, by any person other than a driller licensed under the provisions of this act. No person shall produce water from an underground source through any well drilled in violation of this act. No person shall apply water from such underground source to land having no valid water right for the purpose to which applied.~~] The state engineer may apply for and obtain an injunction in the district court of the county in which [~~any~~] a well or land affected is situated, against [~~any~~] a person, firm

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or corporation who [~~shall drill or begin~~] drills or begins the drilling of a well in violation of the provisions of [~~this act, or who shall cause, allow or permit the drilling of a well by a person other than a licensed driller upon land owned or controlled by him, or who shall produce water from any well drilled in violation of this act, or who shall apply water from an underground source, as hereinabove defined, to lands having no valid water right for the purpose to which applied.~~] the Water Well Drillers Licensing Act or without first obtaining a permit to drill the well. This provision shall [~~in no wise be construed to~~] not affect the existing right of a court of equity in the exercise of its general equity powers to grant relief to the state [~~of New Mexico~~] by injunction or otherwise."

Section 13. TEMPORARY PROVISION.--A person who has a driller's license on the effective date of this act shall have until July 1, 2005 to obtain a water well driller's license pursuant to the terms of this act.

Section 14. APPROPRIATION.--One hundred fifty thousand dollars ($150,000) is appropriated from the general fund to the office of the state engineer for expenditure in fiscal year 2005 to carry out the provisions of the Water Well Drillers Licensing Act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2005 shall revert to the general fund.

Section 15. REPEAL.--Sections 72-12-12 through 72-12-14 and 72-12-16 NMSA 1978 (being Laws 1949, Chapter 178, Sections 1 through 3 and 5, as amended) are repealed.

Section 16. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2004.

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HOUSE BILL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

DISCUSSION DRAFT

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

MAKING AN APPROPRIATION FOR SUPPORT AND IMPROVEMENTS OF THE WATER ADJUDICATION PROCESS IN THE OFFICE OF THE STATE ENGINEER; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--One million three hundred twenty-four thousand four hundred dollars ($1,324,400) is appropriated from the general fund to the state engineer for expenditure in fiscal year 2004 and subsequent fiscal years for personnel, hardware, software, equipment, office space and administrative support to accelerate hydrographic survey, fieldwork and mapping and to expand the informal interaction of the state engineer's staff with water rights claimants in order to decrease the amount of formal mediation and litigation within water rights adjudications and to increase informal

negotiations for settlement of claims. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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HOUSE BILL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

DISCUSSION DRAFT

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO PRODUCED WATER; ALLOWING FOR THE DISPOSAL OF PRODUCED WATER WITHOUT STATE ENGINEER APPROVAL; PROVIDING A CORPORATE INCOME TAX CREDIT FOR THE DISPOSAL OF PRODUCED WATER.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Corporate Income and Franchise Tax Act is enacted to read:

"[NEW MATERIAL] CREDIT--DISPOSAL OF TREATED PRODUCED WATER.--

A. To ease the demand on fresh water sources used in electric generation, a person that generates electricity, disposes of produced water by its use in the generation of the electricity and that files a New Mexico corporate income tax return may take a tax credit in an amount equal to one thousand

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dollars ($1,000) per acre-foot of that water not to exceed three million dollars ($3,000,000) per year.

B. The tax credit provided in this section may only be deducted from the corporate income tax liability of the disposer of the treated produced water. Any portion of the tax credit that remains unused at the end of a taxable year may be carried forward for up to three consecutive years.

C. To claim the tax credit provided for in this section, the taxpayer shall provide documentation to the department to prove eligibility for the credit.

D. As used in this section:

(1) "disposer of produced water" means a person that disposes of produced water by its use in the generation of electricity in accordance with rules promulgated by the oil conservation division of the energy, minerals and natural resources department; and

(2) "produced water" means water that is an incidental byproduct from drilling for or production of oil or gas."

Section 2. [NEW MATERIAL] DISPOSAL OF PRODUCED WATER--NO PERMIT REQUIRED.--The state engineer shall not require a permit for the disposal of produced water disposed of in accordance with rules promulgated pursuant to Section 70-2-12 NMSA 1978 by the oil conservation division of the energy, minerals and natural resources department.

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Section 3. Section 70-2-12 NMSA 1978 (being Laws 1978, Chapter 71, Section 1, as amended) is amended to read:

"70-2-12. ENUMERATION OF POWERS.--

A. Included in the power given to the oil conservation division of the energy, minerals and natural resources department is the authority to collect data; to make investigations and inspections; to examine properties, leases, papers, books and records; to examine, check, test and gauge oil and gas wells, tanks, plants, refineries and all means and modes of transportation and equipment; to hold hearings; to provide for the keeping of records and the making of reports and for the checking of the accuracy of the records and reports; to limit and prorate production of crude petroleum oil or natural gas or both as provided in the Oil and Gas Act; and to require either generally or in particular areas certificates of clearance or tenders in connection with the transportation of crude petroleum oil or natural gas or any products of either or both oil and products or both natural gas and products.

B. Apart from any authority, express or implied, elsewhere given to or existing in the oil conservation division by virtue of the Oil and Gas Act or the statutes of this state, the division is authorized to make rules, regulations and orders for the purposes and with respect to the subject matter stated in this subsection:

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(1) to require dry or abandoned wells to be plugged in a way to confine the crude petroleum oil, natural gas or water in the strata in which it is found and to prevent it from escaping into other strata; the division shall require a cash or surety bond in a sum not to exceed fifty thousand dollars ($50,000) conditioned for the performance of such regulations;

(2) to prevent crude petroleum oil, natural gas or water from escaping from strata in which it is found into other strata;

(3) to require reports showing locations of all oil or gas wells and for the filing of logs and drilling records or reports;

(4) to prevent the drowning by water of any stratum or part thereof capable of producing oil or gas or both oil and gas in paying quantities and to prevent the premature and irregular encroachment of water or any other kind of water encroachment that reduces or tends to reduce the total ultimate recovery of crude petroleum oil or gas or both oil and gas from any pool;

(5) to prevent fires;

(6) to prevent "blow-ups" and "caving" in the sense that the conditions indicated by such terms are generally understood in the oil and gas business;

(7) to require wells to be drilled, operated and produced in such manner as to prevent injury to neighboring leases or properties;

(8) to identify the ownership of oil or gas producing leases, properties, wells, tanks, refineries, pipelines, plants, structures and all transportation equipment and facilities;

(9) to require the operation of wells with efficient gas-oil ratios and to fix such ratios;

(10) to fix the spacing of wells;

(11) to determine whether a particular well or pool is a gas or oil well or a gas or oil pool, as the case may be, and from time to time to classify and reclassify wells and pools accordingly;

(12) to determine the limits of any pool producing crude petroleum oil or natural gas or both and from time to time redetermine the limits;

(13) to regulate the methods and devices employed for storage in this state of oil or natural gas or any product of either, including subsurface storage;

(14) to permit the injection of natural gas or of any other substance into any pool in this state for the purpose of repressuring, cycling, pressure maintenance, secondary or any other enhanced recovery operations;

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(15) to regulate the disposition of water produced or used in connection with the drilling for or producing of oil or gas or both and to direct surface or subsurface disposal of the water, <u>including disposal by use in drilling for or production of oil or gas, road construction or maintenance or other construction or the generation of electricity or other industrial processes</u>, in a manner that will afford reasonable protection against contamination of fresh water supplies designated by the state engineer;

(16) to determine the limits of any area containing commercial potash deposits and from time to time redetermine the limits;

(17) to regulate and, where necessary, prohibit drilling or producing operations for oil or gas within any area containing commercial deposits of potash where the operations would have the effect unduly to reduce the total quantity of the commercial deposits of potash [~~which~~] <u>that</u> may reasonably be recovered in commercial quantities or where the operations would interfere unduly with the orderly commercial development of the potash deposits;

(18) to spend the oil and gas reclamation fund and do all acts necessary and proper to plug dry and abandoned oil and gas wells and to restore and remediate abandoned well sites and associated production facilities in accordance with the provisions of the Oil and Gas Act, the rules and regulations

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adopted under that act and the Procurement Code, including disposing of salvageable equipment and material removed from oil and gas wells being plugged by the state;

(19) to make well price category determinations pursuant to the provisions of the federal Natural Gas Policy Act of 1978 or any successor act and, by regulation, to adopt fees for such determinations, which fees shall not exceed twenty-five dollars ($25.00) per filing. Such fees shall be credited to the account of the oil conservation division by the state treasurer and may be expended as authorized by the legislature;

(20) to regulate the construction and operation of oil treating plants and to require the posting of bonds for the reclamation of treating plant sites after cessation of operations;

(21) to regulate the disposition of nondomestic wastes resulting from the exploration, development, production or storage of crude oil or natural gas to protect public health and the environment; and

(22) to regulate the disposition of nondomestic wastes resulting from the oil field service industry, the transportation of crude oil or natural gas, the treatment of natural gas or the refinement of crude oil to protect public health and the environment, including administering the Water

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Quality Act as provided in Subsection E of Section 74-6-4 NMSA 1978."

Section 4. Section 70-2-33 NMSA 1978 (being Laws 1935, Chapter 72, Section 24, as amended) is amended to read:

"70-2-33. DEFINITIONS.--As used in the Oil and Gas Act:

A. "person" means:

(1) any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity; or

(2) the United States or any agency or instrumentality thereof or the state or any political subdivision thereof;

B. "pool" means an underground reservoir containing a common accumulation of crude petroleum oil or natural gas or both. Each zone of a general structure, which zone is completely separate from any other zone in the structure, is covered by the word pool as used in the Oil and Gas Act. Pool is synonymous with "common source of supply" and with "common reservoir";

C. "field" means the general area [~~which~~] that is underlaid or appears to be underlaid by at least one pool and also includes the underground reservoir or reservoirs containing the crude petroleum oil or natural gas or both. The words field and pool mean the same thing when only one

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underground reservoir is involved; however, field, unlike pool, may relate to two or more pools;

D. "product" means any commodity or thing made or manufactured from crude petroleum oil or natural gas and all derivatives of crude petroleum oil or natural gas, including refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, treated crude oil, fuel oil, residuum, gas oil, naphtha, distillate, gasoline, kerosene, benzine, wash oil, waste oil, lubricating oil and blends or mixtures of crude petroleum oil or natural gas or any derivative thereof;

E. "owner" means the person who has the right to drill into and to produce from any pool and to appropriate the production either for himself or for himself and another;

F. "producer" means the owner of a well capable of producing oil or natural gas or both in paying quantities;

G. "gas transportation facility" means a pipeline in operation serving gas wells for the transportation of natural gas or some other device or equipment in like operation whereby natural gas produced from gas wells connected therewith can be transported or used for consumption;

H. "correlative rights" means the opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas or both in the pool, being an

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amount, so far as can be practicably determined and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas or both under the property bears to the total recoverable oil or gas or both in the pool and, for such purpose, to use his just and equitable share of the reservoir energy;

I. "potash" means the naturally occurring bedded deposits of the salts of the element potassium; [~~and~~]

J. "casinghead gas" means any gas or vapor or both indigenous to an oil stratum and produced from such statum with oil, including any residue gas remaining after the processing of casinghead gas to remove its liquid components; and

K. "produced water" means water that is an incidental byproduct from drilling for or the production of oil and gas."

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HOUSE BILL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

DISCUSSION DRAFT

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO UTILITIES; REQUIRING WATER CONSERVATION PLANS FOR CERTAIN ELECTRIC POWER GENERATING PLANTS; PRESCRIBING APPROVAL PROCEDURES; CHANGING RULING DEADLINES AND THE SIZE OF PLANTS SUBJECT TO LOCATION APPROVAL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 62-9-3 NMSA 1978 (being Laws 1971, Chapter 248, Section 1, as amended) is amended to read:

"62-9-3. LOCATION CONTROL--LIMITATIONS.--

A. The legislature finds that it is in the public interest to consider any adverse effect upon the environment and upon the quality of life of the people of the state that may occur due to plants, facilities and transmission lines needed to supply present and future electrical services. It is recognized that such plants, lines and facilities will be

needed to meet growing demands for electric services and cannot be built without in some way affecting the physical environment where these plants, facilities and transmission lines are located. The legislature therefore declares that it is the purpose of this section to provide for the supervision and control by the commission of the location within this state of new plants, facilities and transmission lines for the generation and transmission of electricity for sale to the public.

B. [~~No~~] A person, including [~~any~~] a municipality, shall not begin the construction of [~~any~~] a plant designed for or capable of operation at a capacity of [~~three hundred~~] fifty thousand kilowatts or more for the generation of electricity for sale to the public within or without this state, whether or not owned or operated by a person that is a public utility subject to regulation by the commission, or of transmission lines in connection with such a plant, on a location within this state unless the location has been approved by the commission. For the purposes of this section, "transmission line" means [~~any~~] an electric transmission line and associated facilities designed for or capable of operations at a nominal voltage of two hundred thirty kilovolts or more, to be constructed in connection with and [~~to~~] transmit electricity from a new plant for which approval is required.

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C. Application for approval shall contain all information required by the commission to make its determination, be made in writing setting forth the facts involved and be filed with the commission. The commission shall, after a public hearing and upon notice as the commission may prescribe, act upon the application. The commission may condition its approval upon a demonstration by the applicant that it has received all necessary air and water quality permits.

D. [~~No~~] An approval pursuant to this section shall not be required for:

(1) construction in progress on the effective date of this section or for additions to or modifications of an existing plant or transmission line; or

(2) plants that have received, by January 1, 2003, the following permits, approvals or authorizations, if applicable:

(a) an authority to construct permit pursuant to the Air Quality Control Act;

(b) a ground water discharge permit pursuant to the Water Quality Act;

(c) a county site development plan approval; and

(d) Indian tribal or pueblo government permits.

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E. The commission shall approve the application for the location of the generating plant unless the commission finds that the operations of the facilities for which approval is sought will not be in compliance with all applicable air and water pollution control standards and regulations existing. The commission shall not require compliance with performance standards other than those established by the agency of this state having jurisdiction over a particular pollution source.

F. The commission shall approve the application for the location of the transmission lines unless the commission finds that the location will unduly impair important environmental values.

G. [~~No~~] An application shall not be approved pursuant to this section [~~which~~] if it violates an existing state, county or municipal land use statutory or administrative regulation unless the commission finds that the regulation is unreasonably restrictive and compliance with the regulation is not in the interest of the public convenience and necessity, in which event and to the extent found by the commission the regulation shall be inapplicable and void as to the siting. When it becomes apparent to the commission that an issue exists with respect to whether a regulation is unreasonably restrictive and compliance with the regulation is not in the interest of public convenience

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and necessity, it shall promptly serve notice of that fact by certified mail upon the agency, board or commission having jurisdiction for land use of the area affected and shall make the agency, board or commission a party to the proceedings upon its request and shall give it an opportunity to respond to the issue. The judgment of the commission shall be conclusive on all questions of siting, land use, aesthetics and any other state or local requirements affecting the siting.

H. Nothing in this section shall be deemed to confer upon the commission power or jurisdiction to regulate or supervise any person, including a municipality, that is not otherwise a public utility regulated and supervised by the commission, with respect to its rates and service and with respect to its securities, nor shall any other provision of the Public Utility Act be applicable with respect to such a person, including a municipality.

I. The commission shall issue its order granting or denying the application within [~~six~~] nine months from the date the application is filed with the commission. Failure to issue its order within [~~six~~] nine months is deemed to be approval of the application; provided, however, that the commission may extend the time for granting approval for a transmission line that is subject to this section for an additional ten months upon finding that the additional time

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is necessary to determine if the proposed location of the line will unduly impair important environmental values."

Section 2. A new section of the Public Utility Act is enacted to read:

"[NEW MATERIAL] ELECTRIC POWER GENERATING PLANTS--WATER CONSERVATION PROVISIONS--APPROVAL PROCESS.--

A. Notwithstanding the provisions of Subsection H of Section 62-9-3 NMSA 1978, a person, including a municipality, shall not begin construction or expansion of an electric power generating plant that will consumptively use more than one hundred acre-feet of water in a year for the sale of electricity to the public within or without this state, whether or not owned or operated by a person that is a public utility subject to regulation by the commission, unless that person has submitted to the commission an application for that construction or expansion that has been approved by the commission. In considering an application to construct or expand an electric power generating plant, the commission shall require the applicant to submit a water utilization plan that:

(1) compares alternate water management practices, including effects on capital and operating costs, water use, wastewater management and energy efficiency; and

(2) includes information about alternative power plant cooling methods, including dry cooling, hybrid wet-dry

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cooling and the use of produced or other sources of waste or degraded water.

B. The commission shall submit the water utilization plan to the state engineer. Within forty-five days, the state engineer shall evaluate the proposed water utilization plan and provide the commission with a determination of whether the proposed plan is consistent with the conservation of water within the state. The state engineer may recommend to the commission any alternatives for consideration and shall comment on whether the plan meets the criteria set forth in Subsection C of this section.

C. The commission shall develop criteria for evaluating electric power generating plant water utilization plans and shall reject an application that in its judgment does not meet the criteria. The criteria shall include:

(1) total all-in life-cycle costs for water acquisition, treatment, pumping, use and disposal;

(2) total all-in life-cycle costs for construction and operating costs;

(3) estimated impact of these costs on the retail cost of electric power;

(4) energy efficiency gains or losses; and

(5) any other derivative effects such as air pollution increases or decreases.

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D. An applicant shall provide the commission at the time of filing the application with the commission proof that notice of the application, including a description of the proposed construction or expansion and how to obtain further information, has been:

(1) provided by certified mail to the owners of record, as shown by the most recent property tax schedule, of all properties within one-half mile of the property on which the construction or expansion is proposed to be located on or before the newspaper publication date required by this subsection;

(2) provided by certified mail to all municipalities and counties and tribal organizations within a ten-mile radius of the property on which the construction or expansion is proposed to be located on or before the newspaper publication date required by this subsection;

(3) published once in a newspaper of general circulation in the county in which the property on which the construction or expansion is proposed to be located; provided that this notice shall appear in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper calculated to give the general public the most effective notice, and shall be printed in both English and Spanish;

(4) posted in at least four publicly accessible and conspicuous places on or before the newspaper publication date required by this subsection, including the entrances to the existing or proposed power plant, if the entrance is publicly accessible and conspicuous;

(5) mailed to all persons who have made a written request to the commission for notice of this application on or before the newspaper publication date required by this subsection; and

(6) mailed by certified mail to all persons on a list that shall be maintained by the commission of individuals and organizations who have requested notice of applications made pursuant to this section.

E. Within thirty days of receiving a determination from the state engineer pursuant to Subsection B of this section, the commission shall establish a date for a public hearing on the application. At least thirty days but no more than forty-five days prior to that date, the commission shall provide public notice of the date, location and subject of the hearing. The notice shall be distributed according to the public notice requirements described in Subsection D of this section.

F. The commission shall issue its order granting or denying the application within nine months of the date the application is filed with the commission. If the commission

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does not issue its order within the nine months, the application shall be deemed approved.

G. The information required to be submitted pursuant to this section and the findings required by this section are supplemental to and do not supersede information and findings otherwise required by law.

H. The requirements of this section apply only to electric power generating units placed into service on or after January 1, 2003. In addition, any expansion of an electric power generating plant that has been placed into service prior to January 1, 2003 and that results in a plant capacity of three hundred thousand kilowatts or less is exempted from the requirements of this section."

HOUSE BILL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

DISCUSSION DRAFT

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO TAXATION; PROVIDING A PERSONAL INCOME TAX CREDIT AND A CORPORATE INCOME TAX CREDIT FOR AGRICULTURAL WATER CONSERVATION EXPENSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Income Tax Act is enacted to read:

"[NEW MATERIAL] TAX CREDIT--AGRICULTURAL WATER CONSERVATION EXPENSES.--

A. A taxpayer may claim a credit against his income tax liability equal to seventy-five percent of his incurred expenses, not to exceed a maximum annual credit of ten thousand dollars ($10,000), for eligible improvements in irrigation systems or water management methods. The credit may be claimed

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for the taxable year in which the expenses are incurred if the taxpayer in that year:

(1) owned or leased a water right appurtenant to the land on which an eligible improvement was made;

(2) files an individual New Mexico income tax return; and

(3) is not a dependent of another individual.

B. As used in this section, "eligible improvement in irrigation systems or water management methods" means an improvement that is:

(1) made after January 1, 2005;

(2) consistent and complies with a water conservation plan approved by the local soil and water conservation district in which the improvement is located; and

(3) primarily designed to substantially conserve water on land in New Mexico that is owned or leased by the taxpayer and used by the taxpayer or the taxpayer's lessee to:

(a) produce agricultural products;

(b) harvest or grow trees; or

(c) sustain livestock.

C. Taxpayers who are considered for federal income tax purposes as co-owners of the land on which an eligible improvement in irrigation systems or water management methods is made may claim the pro rata share of the credit allowed pursuant to this section based on the co-owner's ownership

interest. The total of the credits allowed all the taxpayers considered co-owners may not exceed the amount that would have been allowed a sole owner of the land.

D. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

E. If the allowable tax credit in a taxable year exceeds the income taxes otherwise due from a taxpayer pursuant to the Income Tax Act, or if there are no income taxes due from the taxpayer, the taxpayer may carry forward the amount of the credit not used in that year to offset the taxpayer's liability for income taxes pursuant to the Income Tax Act for not more than five consecutive taxable years.

F. The soil and water conservation commission, with information provided by the state engineer, shall promulgate rules to implement this section, and those rules shall include detailed guidelines to assist the department in determining whether improvements in irrigation systems or water management methods qualify for the credit available under this section."

Section 2. A new section of the Corporate Income and Franchise Tax Act is enacted to read:

"[NEW MATERIAL] TAX CREDIT--AGRICULTURAL WATER CONSERVATION EXPENSES.--

A. A taxpayer may claim a credit against his corporate income tax liability equal to seventy-five percent of his incurred expenses, not to exceed a maximum annual credit of ten thousand dollars ($10,000), for eligible improvements in irrigation systems or water management methods. The credit may be claimed for the taxable year in which the expenses are incurred if the taxpayer in that year:

(1) owned or leased a water right appurtenant to the land on which an eligible improvement was made; and

(2) files a New Mexico corporate income tax return.

B. As used in this section, "eligible improvement in irrigation systems or water management methods" means an improvement that is:

(1) made after January 1, 2005;

(2) consistent and complies with a water conservation plan approved by the local soil and water conservation district in which the improvement is located; and

(3) primarily designed to substantially conserve water on land in New Mexico that is owned or leased by the taxpayer and used by the taxpayer or the taxpayer's lessee to:

(a) produce agricultural products;

(b) harvest or grow trees; or

(c) sustain livestock.

C. Taxpayers that are considered for federal income tax purposes as co-owners of the land on which an eligible

improvement in irrigation systems or water management methods is made may claim the pro rata share of the credit allowed pursuant to this section based on the co-owner's ownership interest. The total of the credits allowed all the taxpayers considered co-owners may not exceed the amount that would have been allowed a sole owner of the land.

D. If the allowable tax credit in a taxable year exceeds the income taxes otherwise due from a taxpayer pursuant to the Corporate Income and Franchise Tax Act, or if there are no taxes due pursuant to the Corporate Income and Franchise Tax Act, the taxpayer may carry forward the amount of the credit not used in that year to offset the taxpayer's liability for income taxes pursuant to the Corporate Income and Franchise Tax Act for not more than five consecutive tax years.

E. The soil and water conservation commission, with information provided by the state engineer, shall promulgate rules to implement this section, and those rules shall include detailed guidelines to assist the department in determining whether improvements in irrigation systems or water management methods qualify for the credit available under this section."

Section 3. APPLICABILITY.--The provisions of this act apply to taxable years beginning on and after January 1, 2005.

SENATE BILL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

DISCUSSION DRAFT

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO TAXATION; ENACTING A NEW SECTION OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT; PROVIDING A TAX CREDIT FOR IMPAIRED WATER TREATMENT ASSISTANCE BY NATIONAL LABORATORIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"[NEW MATERIAL] TAX CREDIT AGAINST GROSS RECEIPTS TAXES--RATE--AGGREGATE LIMIT.--

A. After July 1, 2004, a tax credit in an amount equal to the qualified expenditures made to provide impaired water treatment assistance by a national laboratory may be claimed against the amounts owed and paid pursuant to the Gross Receipts and Compensating Tax Act in the prior calendar year. The expenditures for impaired water treatment assistance shall

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be provided on each month's gross receipts and compensating tax return filed by the national laboratory. The tax credit is to encourage a national laboratory to partner with New Mexico entities and to leverage federal funding and national laboratory expertise to assist water providers, managers and users in New Mexico in developing and implementing new technologies to create new water resources through the treatment of impaired waters. Qualified expenditures:

(1) shall be rendered to a partner responsible for water located in New Mexico that certifies to the national laboratory that the impaired water treatment assistance provided is not otherwise available at a reasonable cost through private industry;

(2) shall be made prior to the application for the tax credit;

(3) shall be limited to twenty-five thousand dollars ($25,000) per partner per calendar year for technical assistance that may include information sharing, analysis, laboratory testing and educational outreach;

(4) shall be limited to seventy-five thousand dollars ($75,000) per partner per calendar year for technology development and demonstration that may include field testing, modeling, engineering analysis and design to facilitate maturation and demonstration of emerging technologies with high potential for treatment and use of impaired water;

(5) shall not exceed two million dollars ($2,000,000) in the total aggregate per calendar year; and

(6) may include employee salaries and wages, fringe benefits and employer payroll taxes; administrative costs that shall not total more than seventy-five percent of the total qualified expenditures; in-state travel expenses and per diem and mileage at the internal revenue service standard rates; and supplies and services of contractors to the provision of impaired water treatment assistance.

B. A national laboratory that receives a tax credit pursuant to this section shall, within thirty days of each calendar quarter, submit to the department a report that contains:

(1) the name and address, including the county, of each partner assisted during the calendar quarter;

(2) certification from the partner that the same service was not available for a reasonable cost from private industry and documentation by the national laboratory that it exerted due diligence to determine that such assistance was not otherwise available;

(3) the qualified expenditures attributed to each partner;

(4) a description of the impaired water treatment assistance provided or received; and

(5) the name of the provider of the impaired water treatment assistance to the partner.

C. A national laboratory that receives a tax credit pursuant to this section shall produce by June 30 of each year and present to the department an annual report that:

(1) the summarizes the results from the quarterly reports;

(2) identifies the number of projects initiated, continuing and completed for the year;

(3) provides an assessment of the benefits derived by the state or local governments or communities due to the assistance provided; and

(4) summarizes the total expenditures and the amount of tax credit claimed for the calendar year covered in the report.

D. As used in this section:

(1) "contractor" means an individual or legal entity, or a unit, subdivision or agency of the state or of the federal or a tribal government that enters into a contract with a national laboratory to support the laboratory in providing assistance in resolving water issues;

(2) "impaired water" means water containing constituents or contaminants that make it unsuitable for common use, including heavy metals, toxic or hazardous chemicals or potentially toxic or hazardous chemicals, elevated levels of

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salts or sediments or other waters requiring treatment for common agricultural, industrial, commercial, residential, recreational or potable use;

(3) "impaired water treatment assistance" means all activities entered into to provide impaired water treatment assistance to develop and test new technologies for the treatment of impaired water to partners by a national laboratory or its contractors;

(4) "national laboratory" means a prime contractor designated as a national laboratory by act of congress that is operating a taxable entity in New Mexico; and

(5) "partner" means an individual or a legal entity, or a unit, subdivision or agency of the state or of a tribal government that is located in New Mexico and that uses, provides, administers or impacts water resources in the state."

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SENATE BILL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

DISCUSSION DRAFT

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

MAKING AN APPROPRIATION FOR INTERNET ACCESS TO THE SANDIA NATIONAL LABORATORIES WATER MODEL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--Fifty thousand dollars ($50,000) is appropriated from the general fund to the office of the state engineer for expenditure in fiscal year 2005 to establish internet access to the water model of Sandia national laboratories. Any unexpended or unencumbered balance remaining at the end of fiscal year 2005 shall revert to the general fund.

.148981.1

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HOUSE BILL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

DISCUSSION DRAFT

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

MAKING AN APPROPRIATION TO FUND THE POSITION OF STATE CLIMATOLOGIST AT NEW MEXICO STATE UNIVERSITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--One hundred fifty thousand dollars ($150,000) is appropriated from the general fund to the board of regents of New Mexico state university for expenditure in fiscal year 2005 to fund the position of state climatologist. Any unexpended or unencumbered balance remaining at the end of fiscal year 2005 shall revert to the general fund.

.148442.1

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HOUSE BILL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

DISCUSSION DRAFT

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

MAKING AN APPROPRIATION FOR A VITICULTURIST AT NEW MEXICO STATE UNIVERSITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--One hundred fifty thousand dollars ($150,000) is appropriated from the general fund to the board of regents of New Mexico state university for expenditure in fiscal year 2005 for a position and program in viticulture to support the need of New Mexico grape growers and wine producers for practical information and recommendations for growing and managing their businesses. Any unexpended or unencumbered balance remaining at the end of fiscal year 2005 shall revert to the general fund.

.148441.1

HOUSE BILL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

DISCUSSION DRAFT

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

MAKING AN APPROPRIATION FOR WATER MANAGEMENT RESEARCH AND EDUCATION BY THE AGRICULTURAL EXPERIMENT STATION AND COOPERATIVE EXTENSION SERVICE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--

A. Five hundred thousand dollars ($500,000) is appropriated from the general fund to the board of regents of New Mexico state university in the following amounts to the following organizations for expenditure in fiscal year 2005 to conduct water management research and education programs:

(1) two hundred thousand dollars ($200,000) to the agricultural experiment station; and

(2) three hundred thousand dollars ($300,000) to the cooperative extension service.

B. Any unexpended or unencumbered balance remaining at the end of fiscal year 2005 shall revert to the general fund.

HOUSE BILL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

DISCUSSION DRAFT

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

MAKING AN APPROPRIATION FOR A PINK BOLLWORM CONTROL PROGRAM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--Four hundred thousand dollars ($400,000) is appropriated from the general fund to the board of regents of New Mexico state university for expenditure in fiscal year 2005 for the New Mexico department of agriculture to match pink bollworm control districts' expenditures pursuant to the Pink Bollworm Control Act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2005 shall revert to the general fund.

.148468.1

HOUSE BILL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

DISCUSSION DRAFT

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

MAKING AN APPROPRIATION FOR A PHREATOPHYTE ERADICATION AND CONTROL PROGRAM; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--

A. Five million dollars ($5,000,000) is appropriated from the general fund to the board of regents of New Mexico state university for expenditure in fiscal years 2004 through 2006, with fifty percent of the expenditure to be devoted to a non-native phreatophyte eradication and control program and fifty percent of the expenditure to be devoted to revegetation of native species on the Pecos river and the Rio Grande, the expenditures to be divided equally between the two river basins.

B. The appropriation provided in this section is contingent on soil and water conservation districts:

(1) developing management and native vegetation restoration plans;

(2) conducting hearings within the local conservation districts to receive public input on the plans;

(3) carrying out aerial spraying only by helicopter or ground application with prior public notice;

(4) monitoring and evaluating the effects of control on wildlife, water quality, vegetation and soil health; and

(5) if control affects threatened or endangered species, complying with applicable federal law and conforming to any duly enacted recovery plan.

C. The New Mexico department of agriculture shall conduct an assessment and publish a report detailing the amount of water conserved and the amount of money expended.

D. Any unexpended or unencumbered balance remaining at the end of fiscal year 2006 shall revert to the general fund.

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

DISCUSSION DRAFT

FOR THE

WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

MAKING AN APPROPRIATION TO PROVIDE A FIFTY PERCENT MATCH FOR A NATIONAL SCIENCE FOUNDATION GRANT FOR THE EXPERIMENTAL PROGRAM TO STIMULATE COMPETITIVE RESEARCH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--One million five hundred thousand dollars ($1,500,000) is appropriated from the general fund to the board of regents of New Mexico institute of mining and technology for expenditure in fiscal years 2005 and 2006 to provide a fifty percent match for a grant from the national science foundation for the experimental program to stimulate competitive research, also known as EPSCoR. The program will be a collaboration among the office of the state engineer and the state's research universities to conduct comprehensive research in hydrology and water management systems to support

water rights adjudications by the office of the state engineer, and data collected and research results shall be shared among the collaborating parties. Any unexpended or unencumbered balance remaining at the end of the fiscal year 2006 shall revert to the general fund.

SENATE BILL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

DISCUSSION DRAFT

FOR THE

WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

MAKING AN APPROPRIATION FOR A STATEWIDE AQUIFER MAPPING PROJECT TO BE CONDUCTED BY THE BUREAU OF GEOLOGY AND MINERAL RESOURCES AT NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--Six hundred twenty thousand dollars ($620,000) is appropriated from the general fund to the board of regents of New Mexico institute of mining and technology for expenditure in fiscal year 2005 and subsequent fiscal years to conduct a statewide aquifer mapping project by the bureau of geology and mineral resources. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

SENATE BILL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

DISCUSSION DRAFT

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

MAKING AN APPROPRIATION TO PROVIDE COORDINATION SERVICES BY THE STATE FORESTER FOR BOSQUE MANAGEMENT AND RIVER IMPROVEMENT PROJECTS STATEWIDE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATION.--Seventy-five thousand dollars ($75,000) is appropriated from the general fund to the energy, minerals and natural resources department for expenditure in fiscal year 2005 to provide coordination services by the state forester for bosque management and river improvement projects statewide among state, local and federal resource management agencies, including soil and water conservation districts, the interstate stream commission, the department of game and fish, the department of environment, irrigation and conservancy districts, the state land office, the bureau of land

management, the United States fish and wildlife service, the United States army corps of engineers, the bureau of reclamation, the bureau of Indian affairs, pueblos, tribes, cities, counties, research institutions and nonprofit volunteer organizations. Any unexpended or unencumbered balance remaining at the end of the fiscal year 2005 shall revert to the general fund.

SENATE JOINT MEMORIAL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

DISCUSSION DRAFT

FOR THE

WATER AND NATURAL RESOURCES COMMITTEE

A JOINT MEMORIAL

REQUESTING THE STATE FORESTER TO DEVELOP AND IMPLEMENT A NEW MEXICO FOREST HEALTH PLAN THAT EMULATES THE BEST MANAGEMENT PRACTICES CURRENTLY IN USE ON THE MESCALERO APACHE INDIAN RESERVATION.

WHEREAS, New Mexico's forests are in an unhealthy state due to an overdensity of fuels, including invasive species and noxious weeds, resulting from years of aggressive fire prevention and having removed fire from the natural scheme of nature; and

WHEREAS, the drought conditions that the state has experienced over the last several years have exacerbated this unhealthy condition; and

WHEREAS, as a result of the overdensity of fuel and the anticipated long-lasting drought situation, biodiversity within

the state's ecosystems continues to decrease and conditions for continued insect outbreaks remain likely, thus adding to the possibility of catastrophic wildfires occurring within the state; and

WHEREAS, catastrophic fires present a threat to the lives and property of New Mexico residents; and

WHEREAS, catastrophic wildfires could have devastating impacts on the state's critical watersheds and negative impacts on domestic water supply for New Mexico residents; and

WHEREAS, the magnitude of the forest health problem is in terms of millions of acres and involves different jurisdictional boundaries and authorities; and

WHEREAS, the cost to remedy and maintain sound forest ecosystems within the state will be tremendous and all available land management resources must be used both efficiently and effectively; and

WHEREAS, the Mescalero Apache Tribe's forest management operations, working in concert with the bureau of Indian affairs, Mescalero agency, have become nationally known for the effective and efficient way in which they have addressed many of the forest health issues mentioned within;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the forestry division of the energy, minerals and natural resources department be requested to facilitate the development and implementation of a statewide

forest health plan that will effectively bring together the resources of federal agencies, tribal, state and local governments and private landowners to address the issues described herein; and

BE IT FURTHER RESOLVED, with the anticipated completion date for the New Mexico forest health plan being October 2004, that the state forester send the plan to the New Mexico legislature by December 2004; and

BE IT FURTHER RESOLVED that copies of this memorial be transmitted to the secretary of energy, minerals and natural resources, the state forester, the New Mexico congressional delegation and the chief of the United States forest service.

HOUSE BILL

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

DISCUSSION DRAFT

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO WATER; PROVIDING FOR THE REGULATION OF LIVESTOCK WATER TANKS; AMENDING SECTIONS OF CHAPTER 72 NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 72-5-32 NMSA 1978 (being Laws 1941, Chapter 126, Section 25, as amended) is amended to read:

"72-5-32. CONSTRUCTION OF DAMS EXCEEDING TEN FEET IN HEIGHT.--Any person, association or corporation, public or private, the state or the United States hereafter intending to construct a dam shall meet the requirements of filing applications for appropriations and use of water pursuant to Section 72-5-1, 72-5-22, 72-5-23 or 72-5-24 NMSA 1978. Any person, association or corporation, public or private, the state or the United States intending to construct a dam that exceeds ten feet in height from the lowest natural ground

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surface elevation to the crest of the dam or impounds more than ten acre-feet of water shall submit on a form prescribed by the state engineer detailed plans to the state engineer for approval before construction. If the state engineer finds that the dam design is safe, he shall approve the plans [~~provided that this section shall not apply to stock dams or erosion control structures whose maximum storage capacity does not exceed ten acre-feet or any dam constructed for the sole purpose of sediment and flood control under the supervision of the United States army corps of engineers~~]."

Section 2. Section 72-9-3 NMSA 1978 (being Laws 1907, Chapter 49, Section 74, as amended) is amended to read:

"72-9-3. STOCK WATER.--

A. Any person, firm or corporation desiring to use any of the water in a water tank pursuant to Subsection B of this section for livestock shall make application to the state engineer in the form required by the state engineer. Upon the filing of the application, if the state engineer determines applicability, the state engineer shall issue a permit to the applicant to use the waters applied for.

B. This article shall not be construed to apply to stockmen or stock owners who [~~may~~], prior to July 1, 2004, build or construct livestock water tanks [~~or ponds~~] with the capacity of ten acre-feet of water or less for the purpose of

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watering [~~stock which have a capacity of ten-acre feet of water or less~~] livestock as defined in Section 77-2-1.1 NMSA 1978.

C. As used in this article, "livestock water tank" includes all impoundments that were constructed after July 1, 2004 on naturally dry watercourses, as determined by the state engineer, that have a capacity not exceeding ten acre-feet of water and that are used for stock watering purposes only. "Livestock water tank" does not include an impoundment of any capacity used for fishing, fish propagation, recreation or aesthetic purposes, which shall require a permit pursuant to Section 72-5-1 NMSA 1978."

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